

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT A. FALISE; LOUIS KLEIN,
JR.; FRANK MACCHIAROLA; and
CHRISTIAN MARKET, JR., as
Trustees,

Plaintiff,

-vs-

No. 99 CV 7392

THE AMERICAN TOBACCO COMPANY;
R.J. REYNOLDS TOBACCO COMPANY;
BAT INDUSTRIES, PLC; BROWN &
WILLIAMSON TOBACCO CORPORATION;
PHILIP MORRIS, INC.; LIGGETT
GROUP, INC.; and LORILLARD
TOBACCO COMPANY,

Defendants.

COPY

The deposition of RICHARD SEMENIK called
for examination pursuant to Notice and the Rules of
Civil Procedure for the United States District
Courts pertaining to the taking of depositions,
taken before Kristin Cawley, a notary public within
and for the County of Cook and State of Illinois,
at 35 West Wacker Drive, Chicago, Illinois, on the
2nd day of November, 2000, at the hour of 9:00 a.m.

Reported by: Kristin Cawley, CSR, RPR, CRR
License No.: 084-003619

CC:CMF

1 APPEARANCES:

2 NESS, MOTLEY, LOADHOLT,
3 RICHARDSON & POOLE, by
4 MS. JODI WESTBROOK FLOWERS,
5 28 Bridgestone Boulevard
6 P.O. Box 1792
7 Mount Pleasant, South Carolina 29465
8 (843) 216-9000
9 appeared on behalf of the Plaintiff;

10 WOMBLE, CARLYLE, SANDRIDGE & RICE, by
11 MR. R. DAL BURTON,
12 One Atlantic Center
13 1201 West Peachtree Street, Suite 3500
14 Atlanta, Georgia 30309
15 (404) 888-7372
16 appeared on behalf of R.J. Reynolds;

17 KIRKLAND & ELLIS, by
18 MR. JAMES C. MUNSON, PC,
19 200 East Randolph Drive
20 Chicago, Illinois 60601
21 (312) 861-2144
22 appeared on behalf of
23 Brown & Williamson;

24 WINSTON & STRAWN, by
25 MR. GARY B. GLASS,
200 Park Avenue
New York, New York 10166
appeared on behalf of Philip Morris;

JOHNSON, TYLER & PURVIS, by
MS. JULIA J. TYLER,
11 Dupont Circle, NW, Suite 300
Washington, D.C. 20036
(202) 667-6100
appeared on behalf of Philip Morris.

I N D E X

1		
2	WITNESS	EXAMINATION
3	RICHARD SEMENIK	
4	By Ms. Flowers	4, 156, 161
5	By Mr. Glass	148, 161

E X H I B I T S

11		
12	NUMBER	MARKED FOR ID
13	Semenik Deposition Exhibit	
14	Nos. 1-3	4
15	No. 4	42
16	No. 5	48
17	No. 6	52
18	No. 7	57
19	No. 8	63
20	No. 9	85
21	No. 10	88

1 (Whereupon, Semenik Deposition
2 Exhibit Nos. 1-3 were marked for
3 identification.)

4 (Witness sworn.)

5 RICHARD SEMENIK,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MS. FLOWERS:

10 Q. Good morning, Professor Semenik, my name
11 is Jodi Flowers. We met briefly just before we
12 began.

13 Would you state your name for the record,
14 please?

15 A. Richard J. Semenik.

16 Q. And your current address?

17 A. [DELETED]

18
19 Q. You've been deposed before; isn't that
20 correct, Professor?

21 A. Yes.

22 Q. If you don't understand my questions or if
23 I don't speak loudly enough or if you need to take
24 a break at any time just let me know and I'll be
25 happy to accommodate you.

1 A. Right.

2 Q. You said your address was [DELETED]

3 When did you move to [DELETED] sir?

4 A. I moved to [DELETED] the last week of June,
5 the year 2000.

6 Q. May I ask what precipitated that move?
7 Did you leave the University of Utah?

8 A. Yes. I now am Dean of the College of
9 Business at Montana State University.

10 Q. Is that in [DELETED]

11 A. That's in Bozeman, Montana.

12 Q. And I'm sorry, could you tell me your
13 current title again?

14 A. I'm the Dean of the College of Business,
15 Montana State University, Bozeman, Montana.

16 Q. If I could hand you what have been marked
17 Semenik 1, 2 and 3, No. 1 is the expert report of
18 Richard J. Semenik, Ph.D., No. 2 is your vita, and
19 No. 3 is entitled Semenik materials. I'd like to
20 go to 2 first, sir, because of the move. Is that
21 your current vita?

22 A. No, this would not be current. It doesn't
23 show my new affiliation as Dean -- or my new
24 position of Dean of the College of Business. Let
25 me see about when this would have been done. There

1 are a couple of items missing from the vita that
2 may be of some relevance.

3 Q. Could you tell me what those are, please?

4 A. First of all, my new position, as I
5 stated, Dean of the College of Business, Montana
6 State University, Bozeman, Montana.

7 Secondly, under honors and awards and
8 prizes on the first page, I was given the
9 distinguished career service award from the David
10 Eckel School of Business at the University of Utah
11 upon my leaving there in June of 2000.

12 Under publications, page 5, A, books, a
13 new listing would be Promotion, First Edition,
14 International Thompson Press, forthcoming February
15 2001.

16 Q. Is that a textbook, sir?

17 A. Yes.

18 Q. Is it similar to the textbooks that you've
19 authored in the past?

20 A. It's similar in the sense that it is for
21 university and college student use, yes..

22 Q. Is there anything that you can think of in
23 the new textbook Promotion that would be relevant
24 to tobacco litigation? Let's take the broader
25 question first.

1 A. Well, the issues of branding, brand
2 strategy, all those topics are covered as they are
3 in the advertising book, yes.

4 On page 5, publications, B, journal
5 publications, a publication titled Cyberspace Wide
6 Brands Will Rule, published in a journal called The
7 Communicator, which was published in February
8 2000.

9 Q. Is there anything additional that comes to
10 mind that is not on that vita?

11 A. I'm trying to see. There is one other
12 thing that might not have been included in this
13 vita. On page 11 in category 6-B, professional
14 service, year 2000, Session Chair, American Academy
15 of Advertising. Those are the ones that come to
16 mind on that I'm able to locate.

17 Q. Do you recall the last time you updated
18 your vita?

19 A. I updated my vita in July, and it had all
20 that current information on it.

21 Q. I'd like to request a copy of the updated
22 vita.

23 A. Certainly.

24 Q. Can you tell me why you left the
25 University of Utah?

1 A. I had the opportunity to become Dean at
2 this school, which is a very prestigious
3 appointment, so I chose to take that opportunity.

4 Q. Have you moved into a different field
5 being Dean of the College of Business?

6 A. No, I still do my writing and lecturing in
7 the areas of marketing, branding and brand
8 strategy.

9 Q. Are you still teaching?

10 A. I teach occasionally but it is not part of
11 my primary assignment as Dean.

12 Q. What do you view your primary assignment
13 as Dean as entailing?

14 A. I manage the faculty of the College of
15 Business which includes 23 faculty members and
16 eight staff people and 1,000 students.

17 Q. Does it include curriculum planning?

18 A. Curriculum planning is one of the
19 functions of the faculty which I oversee, so it
20 does include that, yes.

21 Q. Are you currently teaching any classes?

22 A. I'm not assigned to teach. As a matter of
23 fact I taught last Wednesday morning for a
24 colleague, but I'm not assigned to teach any
25 classes.

1 Q. Were there any additional reasons? I
2 don't want to get into any personal issues, but
3 were there any professional reasons why you made
4 the move?

5 A. No. If the question is if I had any
6 problems at the University of Utah, no, I was given
7 the distinguished career service award on the way
8 out so they were quite pleased with my work there.

9 Q. And how long were you there?

10 A. 24 years.

11 Q. Can you tell me when you were first
12 retained to work on the Falise case?

13 A. I would have been first retained on the
14 Falise case, forgive me for thinking, I would say
15 in late 1998 or early 1999 would be my best
16 recollection.

17 Q. And can you tell me what you recall about
18 that? Who contacted you?

19 A. That would have been the law firm of
20 Johnson, Tyler & Purvis, which asked me if I would
21 consider looking at materials related to a case
22 involving issues with respect to targeting and
23 market segmentation, which is one of my main areas
24 of expertise, so I said yes, I would look at those
25 materials.

1 Q. Can you estimate for me how many hours
2 you've put it on the Falise case?

3 A. This would only be a rough estimate but
4 I'll be glad to try to do that. I believe that,
5 not counting today's deposition, that I would have
6 put in in the area of 40 to 50 hours.

7 Q. And what amount are you currently billing
8 per hour?

9 A. \$200 per hour.

10 Q. Is it more for testimony?

11 A. Courtroom testimony is \$250 an hour, yes.

12 Q. Have you read the complaint in this case?

13 A. Yes, I have.

14 Q. Can you tell me what you understand the
15 allegations of the complaint to contain?

16 A. Well, my understanding is that this is an
17 issue whereby it is believed that targeting of
18 certain segments of the population is believed to
19 be harmful to that population. There's also an
20 issue with respect to, and these are the legal
21 aspects of it, which I'm not as familiar with or
22 understand all the legal implications of, the
23 relationship between funds paid from a trust that
24 are in question in terms of requesting those funds
25 be paid by the tobacco industry. That would be my

1 layman's view of the legal issues.

2 Q. Can you tell me about preparation for this
3 deposition today? How much time did you spend
4 getting ready to come here today?

5 A. 12 to 15 hours were spent reviewing all
6 the materials that I've received with respect to
7 this case and the materials that I've put together
8 in terms of my reliance materials, not counting
9 today's - yesterday or today.

10 Q. When did the 12 to 15 hours take place?

11 A. Over the last two weeks.

12 Q. If you could take a look, sir, at Semenik
13 Nov 3, your reliance list, I think you just
14 indicated that you spent some of that 12 to 15
15 hours reviewing material that you had been either
16 given or that you had selected for this case. Does
17 that list comprise the material that you reviewed?

18 A. Yes, but there are no materials on here
19 that I was given. The materials I was given would
20 have been expert reports. I don't believe the
21 expert reports are listed on here. These are
22 materials that I chose and turned over to the law
23 firms.

24 Q. Could you tell me a little bit about that
25 process, putting together this list?

1 A. Over time I have provided to primarily the
2 Johnson, Tyler & Purvis law firm materials that I
3 believe are related to the issue of consumer
4 decision-making and brand choice with respect to
5 cigarettes and tobacco products in some cases, and
6 so this is an accumulation of materials over
7 several years that are the basis for my opinions.

8 Q. When would you estimate you began
9 compiling this list?

10 A. Approximately 1993.

11 Q. And how often would you update it?

12 A. My research is ongoing with respect to
13 these issues, so if I find an article that is part
14 of how I view the decision-making process with
15 respect to consumers and tobacco products then I
16 will provide this to Johnson, Tyler & Purvis and
17 say this is something I believe is relevant and I
18 may rely on when I develop my opinions or express
19 my opinions.

20 Q. Can you describe for me the process that
21 you go through in trying to accumulate supportive
22 sources?

23 A. It's not specifically a process of
24 accumulating supportive sources, rather as I do my
25 research and textbook writing I do extensive

1 research across many, many publications, and when I
2 run across an article or a book that is related to
3 the issue of brand choice and I believe that is
4 also related to the issue of brand choice and
5 consumer decision-making with respect to tobacco
6 products, then I will provide that.

7 Q. Putting aside the other expert testimony
8 for a moment, all of this material is material that
9 you gathered; none of it has been provided to you
10 by law firms or lawyers working on the cases?

11 A. There are materials here where I may
12 request research be done. For example, I'll ask if
13 I can be provided with, and I find here like
14 No. 192, can someone find for me advertisements for
15 Benson & Hedges, and those materials are researched
16 and produced. Sometimes I have resources because
17 of my position on the board of directors of the
18 American Advertising Museum where I can find
19 materials, but in some cases I'll request that
20 those materials be found.

21 Let me clarify. In almost every case that
22 would have to do with examples of ads. It wouldn't
23 have to do with articles.

24 Q. Do you have a recollection of what
25 particular tobacco advertisements you asked for

1 copies of in conjunction with Falise?

2 A. I noticed on here the list of Benson &
3 Hedges ads was on the list of what I recall asking
4 for.

5 Q. Do you recall why you asked for that
6 particular group of ads?

7 A. It was a group of ads that I believed
8 demonstrated that the tobacco industry and
9 cigarette manufacturers target a wide range of
10 consumers, including high end, high education
11 consumers.

12 Q. When you asked for this particular set of
13 ads, the Benson & Hedges ads, did you limit your
14 question to I'd like to see Benson & Hedges ads or
15 did you ask the broader question let me see
16 cigarette advertisements targeted toward higher
17 end, higher education consumers?

18 A. I specifically asked for Benson & Hedges
19 ads.

20 Q. Is there some reason you limited your
21 request to Benson & Hedges?

22 A. Only because it was a good example, no
23 other reason. There are other -- I have discovered
24 other brands targeted to that end of the market.

25 Q. What brands are those?

1 A. One I recall is Rothschild as another
2 brand.

3 Q. Any others?

4 A. Not that I recall at the moment.

5 Q. Did you ask to see copies of any ads that
6 were targeted at blue collar workers?

7 A. No, I did not, although in my now ten
8 years of research I've only seen one group of ads
9 that were targeted at blue collar workers, or let
10 me rephrase that, a group of ads that presented the
11 brand in a way that would attract the attention of
12 blue collar workers, for example.

13 Q. And what advertisement or brand was that?

14 A. That was a Winston campaign from the
15 1970s, late 1970s.

16 Q. Have you undertaken any additional or
17 specific reviews of cigarette advertisements to
18 determine whether any brands besides Winston would
19 appeal or were targeted to blue collar workers?

20 A. Well, in the nine years that I've been
21 researching these issues there are very few
22 campaigns that I have not seen, so I did not
23 undertake a specific reevaluation of ads.

24 Q. I did not see any Winston ads listed on
25 this particular list. Is it safe to assume that

1 you don't intend to rely on Winston ads in your --
2 as a basis for your opinions in the Falise case?

3 A. Well, I may or may not. The fact that I
4 have not provided them, I don't know if that's --
5 there are many ads in here from tobacco products or
6 other product categories that I'll rely on as
7 examples and express specifically as examples, so I
8 don't know if that's a necessary condition for me
9 to rely on something if it's not specifically
10 listed.

11 Q. Well, have you made any plans -- do you
12 intend to testify or are you prepared to testify
13 about say the Winston campaign in the 1970s?

14 A. No.

15 Q. Same question with respect to say the
16 Camel campaign of the 1970s?

17 A. Well, if I'm asked about those campaigns,
18 and I do have some knowledge about them, then I
19 will offer the information that I have.

20 Q. I understand. My question was more have
21 you done anything specifically to prepare to
22 testify on those particular campaigns?

23 A. For this case, no.

24 Q. Same question with respect to the Marlboro
25 campaign.

1 A. Specific preparation on a particular
2 Marlboro campaign, the Marlboro campaign?

3 Q. The Marlboro cowboy?

4 A. Marlboro Reds or Marlboro Lights or the
5 Marlboro cowboy campaign, no, I have not
6 specifically prepared any preparation for that
7 campaign.

8 Q. I thought it was ironic that we're here in
9 the Leo Burnett Building today. Have you ever seen
10 a Marlboro -- since the late 50s have you seen a
11 Marlboro ad or promotional campaign that did not
12 use the cowboy's image, be it Lights or Regulars?

13 A. There have been campaigns that have not
14 used the cowboy for Marlboro Lights and Marlboro
15 Mediums, so I have seen campaigns, yes.

16 Q. What kind of imagery do they use?

17 A. I don't recall at the moment, but it was
18 an attempt to segment those brands differently from
19 the Marlboro campaign.

20 Q. Have you seen Marlboro Lights campaigns,
21 ad campaigns, that do use the western theme,
22 cowboy, whatever you want to call it?

23 A. Does this have to do with the Falise
24 case? Because if it does I'll continue, but I
25 don't know where this is going with respect to the

1 Falise case so I'd like to focus on that if I
2 could.

3 Q. I'm curious if you're intending to offer
4 any opinions specific to the Marlboro campaign with
5 respect to whether or not it has an appeal to blue
6 collar workers.

7 A. If I was asked I would give that opinion.

8 Q. What is your opinion as to whether the
9 Marlboro campaign appeals to blue collar workers?

10 A. Well, given that Marlboro cigarettes is a
11 leading brand among many segments in the population
12 of smokers, then it does have an appeal to groups
13 classified as blue collar, although I'd like to
14 clarify that at some point, and maybe we should do
15 it as soon as I'm done with this statement, but it
16 also appeals to white collar workers,
17 professionals, women. It is a leading brand in
18 many demographic socioeconomic categories.

19 Q. Can you tell me what you base that
20 statement on?

21 A. There are various discussions in trade
22 publications like Advertising Age that indicate
23 that Marlboro is the leading market share brand and
24 that it is also a leading brand across several
25 demographic categories.

1 Q. Would that include blue collar workers?

2 MR. GLASS: Objection. This may be a good time
3 to define what you're referring to as blue collar
4 workers. We've had a number of questions in a row
5 now about blue collar workers and I want to make
6 sure we're on the same page.

7 BY MS. FLOWERS:

8 Q. Professor, do you have a definition of
9 blue collar workers?

10 A. Yes, I do.

11 Q. That is what?

12 A. Blue collar workers are workers who can be
13 highly skilled through semiskilled through
14 unskilled that work in positions like factories,
15 outdoor construction, indoor construction, truck
16 drivers, so a variety of laborer positions that,
17 again, range from semiskilled or unskilled to
18 highly skilled, plumbers, furnace, sheetrock, et
19 cetera, et cetera.

20 Q. What did you use for the basis for that
21 definition?

22 A. That's a definition that marketing
23 analysts use and separate blue collar workers from
24 white collar workers from what are called new
25 collar workers, which are service workers.

1 Q. Have you formed an opinion about whether
2 or not the tobacco industry has targeted blue
3 collar workers as you just defined them?

4 A. Yes.

5 Q. And what is that opinion, sir?

6 A. My opinion is that there are various
7 brands and advertising for brands which would use
8 images and appeals which are appealing to people in
9 the population referred to as blue collar workers,
10 yes.

11 Q. In forming that opinion what did you look
12 at?

13 A. That opinion would be based on my review
14 of materials associated with the tobacco industry
15 and tobacco marketing and marketing in general over
16 several years.

17 Q. If I heard you correctly earlier, though,
18 just so I understand, there was no specific review
19 of any particular ad campaigns in formulating that
20 opinion?

21 A. That's correct.

22 Q. Can you tell me what other testimony, what
23 other expert witness testimony or fact witness
24 testimony you've been given that you reviewed in
25 conjunction with the Falise case, either expert

1 reports or deposition testimony?

2 A. Well, expert reports. I have not seen
3 depositions. Expert reports -- I'm sorry, I've
4 just gone blank. Harris is one, and one I've
5 reviewed several times, and I'm sorry I can't --

6 MR. GLASS: Maybe you could help him out by
7 naming a few of the plaintiff's experts.

8 THE WITNESS: This is one of those times when I
9 just went blank. I looked at it this morning.

10 BY MS. FLOWERS:

11 Q. Let's stick to Harris for the moment. How
12 many Harris reports have you reviewed?

13 A. There was one, including a supplemental
14 report, I believe, so I've looked at that.

15 Q. You believe you looked at two reports by
16 Jeff Harris?

17 A. Right.

18 Q. How about Dr. Cummings?

19 A. Yes, I'm sorry, that's the one I have
20 reviewed most recently. I apologize for not
21 remembering that.

22 Q. And you looked at what with respect to
23 Dr. Cummings?

24 A. Well, Dr. Cummings had -- in fact, his
25 report was an original report, then a supplemental

1 report with a variety of different materials
2 provided each time, so the Cummings report included
3 some ads, articles, scientific reports, all of
4 which I reviewed.

5 Q. You reviewed not only his report but
6 reliance materials?

7 A. That's correct.

8 Q. Did you review the report of Professor
9 John Hanson?

10 A. That's not one I recall.

11 Q. Are any others coming to your mind?

12 A. Or not. No, not at the moment.

13 Q. Have you reviewed any expert reports or
14 expert testimony from any of the defendants'
15 witnesses other than yourself?

16 A. No, I have not seen any of those reports.

17 Q. Same question with respect to some of the
18 industry marketing executives that have been
19 deposed, say David Iauco, Steven Strawsberg?

20 A. I've seen none of those, no.

21 Q. I'm suffering from the same problem, sir,
22 I can't recall every expert in the case, but if
23 someone else comes to mind during a break or
24 otherwise --

25 A. I can say categorically I have not

1 reviewed any deposition testimony or expert reports
2 for the defendants so we won't need to go through a
3 list.

4 Q. And I believe you've testified previously
5 you have not relied or looked at any internal
6 tobacco company documents, including marketing
7 reports. Is that still the case?

8 A. That is the case with the exception that
9 when plaintiff experts provide those documents then
10 I do review those documents.

11 Q. Do you mean when plaintiff's lawyers
12 provide them to you or do you mean in conjunction
13 with say Dr. Cummings' reliance materials?

14 A. Expert report, exactly.

15 Q. Did you also review Dr. Harris' reliance
16 materials?

17 A. Yes. Not as extensively, but I did review
18 those materials, yes.

19 Q. Did you find any of the materials that you
20 reviewed with respect to Dr. Harris or Dr. Cummings
21 informative of your opinions?

22 A. No, I did not.

23 Q. I believe you've also testified previously
24 that you haven't written anything or done original
25 research specific to tobacco; is that correct?

1 A. That is correct.

2 Q. Is that still the case?

3 A. That is still the case.

4 Q. The polling that you did for the
5 Mississippi case and the Texas case and perhaps
6 some other of the state cases, have you done
7 anything similar for this case, Falise?

8 A. No, I have not.

9 Q. You are a former smoker; is that correct?

10 A. That's correct.

11 Q. You started smoking in 1962?

12 A. That's correct, 14 years old.

13 Q. And I believe it was Kent cigarettes that
14 your father smoked?

15 A. That's correct.

16 Q. Were you aware at any time previously that
17 Kent cigarettes contained asbestos in their
18 filters?

19 A. Was I personally aware as an individual?

20 Q. Were you aware then or are you aware now?

21 A. No. The answer is no to both questions.

22 Q. Do you know what synergy is?

23 A. I have a definition of synergy that is
24 used in the marketing discipline, but that would be
25 the only definition of synergy I have.

1 Q. So you don't have a medical definition or
2 a medical understanding of what synergy is?

3 A. No, I'm a marketing person so I don't have
4 that understanding.

5 Q. Do you know what the increased risk of
6 contracting lung cancer from smoking is?

7 A. Yes.

8 Q. What is that, sir?

9 A. Well, let me put it this way. Of 100
10 smokers who are pack a day smokers for 20 years the
11 risk of contracting lung cancer is slightly less
12 than 10 percent.

13 Q. Do you know the increased risk of
14 contracting lung cancer from asbestos exposure?

15 A. No.

16 Q. Do you know the increased risk of
17 contracting lung cancer if you smoke and are
18 exposed to asbestos?

19 A. These are medical questions so I wouldn't
20 know the answer to any of these.

21 Q. The answer is you don't know?

22 A. I don't know the answer to that question,
23 no.

24 Q. Do you remember when the warnings went on
25 the packages?

1 A. Yes.

2 Q. Do you remember what they said?

3 A. The original warnings, well, it won't be
4 verbatim, said that cigarette smoking may be
5 hazardous to your health.

6 Q. Do you recall if you had any particular
7 reaction to that warning?

8 A. I remember seeing it. As an individual,
9 not as a marketing expert?

10 Q. Yes.

11 A. As an individual I remember seeing it,
12 yes.

13 Q. Do you know what the current warnings say?

14 A. There are a series of rotating warnings
15 that point out the risks of smoking with respect to
16 smoking while pregnant, emphysema, that quitting
17 now greatly reduces your risk of serious illness,
18 so there are a series of warnings with very
19 specific information.

20 Q. Do you know whether the current warning
21 says anything about synergy between asbestos and
22 tobacco use?

23 A. No, it does not or they do not.

24 Q. In your report, which is Semenik Exhibit
25 1, you state on I think it's page 12 or 13 that

1 you've reviewed cigarette advertising
2 historically. Do you see that at the bottom of
3 page 12, sir?

4 A. A specific statement that I've reviewed
5 historical or just the fact that it discusses
6 different historical periods?

7 Q. Let me just ask you, have you conducted a
8 review of cigarette advertising historically?

9 A. Yes, I have.

10 Q. Can you describe that for me, please?

11 A. Well, through -- there are several periods
12 during which cigarette advertising has been debated
13 and I reviewed all those areas from the 1930s
14 through the 1940s and 50s as a matter of preparing
15 for various discussions about the role of
16 advertising in tobacco use and brand choice.

17 Q. How did you go about doing that?

18 A. Well, there are various publications that
19 focus on the issue of the history of tobacco
20 advertising, and I began with those and tracked
21 down other references based on original
22 references. Also, the archival materials in the
23 American Advertising Museum have historical
24 cigarette and tobacco advertising. Materials
25 provided in various cases by plaintiff experts have

1 contained ads that I've seen of a historical
2 nature, so there are a variety of encounters I
3 would have had with historical materials.

4 Q. Is that review similar to the compilation
5 of the reliance list in that you have been
6 conducting this review since hired in 1991?

7 A. That's correct, those materials would be
8 listed here.

9 Q. Has there ever been a time when you
10 focused solely on looking at the history of
11 cigarette advertising?

12 A. No, it was always a matter of course. If
13 I was alerted to particular ads from a particular
14 period I would review them.

15 Q. And if I understand your report correctly,
16 you intend to offer an opinion at trial on the
17 history of cigarette advertising; is that fair?

18 A. Yes.

19 Q. One of the things you mentioned when I
20 first asked that question was certain texts -- if
21 certain texts informed your knowledge on cigarette
22 advertisement presumably you would have included
23 them in your list; is that fair?

24 A. Yes.

25 Q. And you also mentioned trips to the

1 American Advertising Museum?

2 A. That's right.

3 Q. Do you recall when you did that?

4 A. The trip during which -- it was one of our
5 national board meetings. I took an extra day to
6 examine the archives, and that would have been in
7 April or May of 99.

8 Q. In addition to the texts and the articles
9 and what's here and the visit to the Ad Museum, are
10 there any other things you could tell me about that
11 you did in your review of cigarette advertising
12 historically?

13 A. No, I think that list would have covered
14 my activities.

15 Q. You didn't go visit Leo Burnett?

16 A. No. There are compilations of Marlboro
17 campaigns that I've encountered in my other
18 examinations.

19 Q. Have you ever been to the Smithsonian in
20 Washington and seen their Marlboro collection?

21 A. I have not had a chance to do that,
22 although it's something I've been intending to do
23 for a long time.

24 Q. Have you gotten on the Internet and done
25 any research there?

1 MR. GLASS: Objection. Are you talking about
2 at any time?

3 BY MS. FLOWERS:

4 Q. I'm talking about presumably fairly
5 recently, but with respect to cigarette advertising
6 historically?

7 A. No, not with respect to cigarette
8 advertising historically, no.

9 Q. Have you asked the tobacco companies to
10 provide you with any of their market research on
11 cigarette advertising historically?

12 A. No.

13 Q. Why not?

14 A. Because I'm able to identify and locate
15 materials that express consumers' reactions to
16 advertising in the cigarette area, so I have the
17 results of what advertising did rather than market
18 research reports about what it intended to do.

19 Q. Have you asked for any of the research
20 that tracked the success of any given campaign?

21 A. Again, I would have the results in the
22 marketplace from the standpoint of market share
23 rather than internal company documents which would
24 provide that same information.

25 Q. Is the market share of any particular

1 cigarette brand publicly available?

2 A. Yes.

3 Q. Where do you find that information?

4 A. Advertising Age publishes brand studies
5 each year.

6 Q. How long has that been going on?

7 A. The brand studies have been going on and
8 been published in Advertising Age since the 1970s,
9 which is when I first started seriously looking at
10 that trade publication.

11 Q. When did you begin to track the market
12 share of cigarette brands?

13 A. Well, I don't know that tracking it is
14 accurate. I will examine market share of brands on
15 occasion to verify, for example, the relationship
16 between Marlboro, Camel, Newport, Kools, when those
17 brands are discussed with regard to these issues in
18 cases, so I don't know that I've ever tracked it
19 specifically as a behavior that I outline in my
20 decision to examine an issue. I may have
21 brought -- in the 1970s when I was teaching I may
22 have brought that in as an example of a product
23 category, so it's hard to say whether it was ever
24 specifically identified as an area by me or just as
25 a matter of what I would use as examples when I was

1 teaching.

2 Q. So the review of market share would not be
3 something you would describe as systematic or
4 continuous in the course of your work?

5 A. No, that's a fair description. It's not
6 systematic or continuous.

7 Q. What else do you look to to determine
8 whether a particular advertising campaign is
9 effective in increasing market share for that
10 brand?

11 A. Well, since the issue is market share then
12 I think the primary identifier would be the
13 percentage of the market that that brand has in the
14 total market for that product category.

15 Q. Would it be helpful to you if there were
16 detailed tracking studies held by the advertising
17 firms or the tobacco companies themselves in
18 analyzing the success of any given ad campaign?

19 A. Depending on -- it depends on what the
20 question is, but success is defined in many ways.
21 Sometimes it's defined as market share, sometimes
22 it's defined as brand image, sometimes it's defined
23 as maintaining or even losing less market share
24 than competitors have, so depending on what the
25 question is, any question I've ever had about

1 market share I've been able to examine in publicly
2 available information.

3 Q. Is that typical in looking at a given
4 consumer product?

5 A. Here's the thing. In most of these issues
6 market share is kind of irrelevant. I've never
7 been asked to examine market share as a key issue
8 in consumer choice with respect to how consumers
9 make their choices in the area of cigarettes. So I
10 guess to be honest with you, market share is not
11 anything that's been raised as a critical issue so
12 I haven't really done a lot of research on it other
13 than knowing in passing that Marlboro has the
14 leading market share and Camel has a particular
15 market share.

16 Q. But you are of the opinion that cigarette
17 advertising is designed to maintain brand loyalty
18 or get people to switch to a different brand?

19 A. Right.

20 Q. Wouldn't that necessarily entail looking
21 at whether people were, in fact, switching or
22 staying with their brand?

23 A. Well, if I was hired by a company to be an
24 analyst for them on the brand switching issue,
25 yes. When it comes to whether or not the tobacco

1 market is behaving like any other consumer market,
2 then I don't really care whether one brand has more
3 or less, only that there is switching going on and
4 that competitors are using brand strategies with
5 target markets.

6 Q. I guess where I'm struggling is wouldn't
7 you want to look at the source materials in
8 formulating your opinions?

9 A. By source materials what do you mean?

10 Q. The market research. If we can accept
11 that you don't really care why the campaign was
12 designed the way it was, you just want to know if
13 it worked, absent just the raw market share
14 numbers, wouldn't you want to look at things like
15 focus group feedback or tracking results or
16 whatever kind of marketing research is out there
17 with respect to these particular campaigns?

18 A. It really doesn't matter what the company
19 wanted to do or tried to do, it only matters what
20 actually happened.

21 Q. Right. What I'm asking you is if they
22 have particular documentation that shows what
23 happened, wouldn't you be interested in seeing
24 that?

25 A. Well, my point is, and I think I stated

1 before, because I can find those in trade
2 publications then I don't need to go to company
3 resources.

4 Q. How does that analysis work before the
5 1970s, before Ad Age started reporting what the
6 market share of any given brand was?

7 MR. GLASS: Which analysis are you speaking
8 about now?

9 MS. FLOWERS: I've forgotten. Let's back up.

10 BY MS. FLOWERS:

11 Q. In trying to determine whether a given ad
12 campaign had an effect on its intended market, what
13 would you look to pre-1970 to try to answer that
14 question?

15 A. Well, I haven't been asked that question
16 so I don't know what resources or materials I might
17 be able to find.

18 Q. So you don't anticipate offering an
19 opinion on that?

20 A. Well, I haven't been asked that question,
21 so it has not come forward as an issue that I felt
22 motivated to do research on. I don't have an
23 opinion right now, no.

24 Q. With respect to your opinion on page 12,
25 No. 6, the images in cigarette advertising do not

1 undermine health warnings or information, I see
2 that you've cited a handful of materials in there
3 including a poll. My question is is there anything
4 other than what's stated on page 12 and 13 that you
5 rely on in support of your opinion that, I guess
6 any cigarette advertising, this isn't limited to
7 time, does not undermine health warnings or
8 information?

9 A. Well, these are examples of polls that
10 demonstrate from as early as the 1930s that
11 consumers, including adolescents, had a high level
12 of awareness of the health risks associated with
13 smoking, but there have been through all decades
14 Gallup polls tracking consumers' awareness of the
15 health risks of using cigarettes. Those are just
16 examples. This is not a comprehensive listing in
17 this discussion.

18 Q. I understand. What I'm trying to do is
19 determine the basis for your opinion, so we've got
20 the Gallup polls that you're relying on.

21 A. There are Gallup polls, yes.

22 Q. Does anything else come to mind with
23 respect to the support for your opinion No. 6? If
24 you want to take a moment and look at your list
25 that's fine.

1 A. Well, there are Gallup polls, there are
2 surveys from newspapers and magazines, there's
3 anecdotal evidence from newspaper reports. Would
4 you like me to go through every one of the
5 materials on my reliance list and show you which
6 ones those are? Is that what we're going to do?

7 Q. If that will help you recall what the
8 basis for the opinion is, yes.

9 MR. GLASS: Well, let me see if I understand
10 the question. Are you asking what are the broad
11 categories that support this opinion or are you
12 asking which specific materials on his 254 itemized
13 lines list support that? Because if it's the
14 latter then he's going to need some time to go
15 through all 254.

16 MS. FLOWERS: Well, I think I got the answer to
17 the broader question. I guess I was hoping that
18 looking at his reliance list might flesh out to see
19 if there are any additional --

20 THE WITNESS: Well, there are 254 of them so
21 looking at it isn't just like glancing at it.

22 MR. GLASS: I guess what I'm seeking is any
23 additional categories, or you want him to actually
24 earmark which of these items?

25 MS. FLOWERS: I'm just trying to identify the

1 categories of materials that he relies on with
2 respect to No. 6, and what I thought I heard was
3 polls, newspaper reports, popular press reports and
4 anecdotal information.

5 THE WITNESS: Right, what people say, newspaper
6 reports revealing people's attitudes, broad surveys
7 and academic studies. So there are literature,
8 public opinion polls, anecdotal evidence reported
9 either by newspapers or in, for example, deposition
10 testimonies. Those would be the categories. Many
11 of those with the deposition testimony are
12 included.

13 BY MS. FLOWERS:

14 Q. With respect to the academic studies that
15 you mentioned, have you undertaken a literature
16 review of the subject matter expressed in No. 6
17 whether or not cigarette advertisements undermine
18 health warnings or information?

19 A. Well, it's not exactly how that works.
20 What happens is the literature with respect to
21 people's decision-making, consumers'
22 decision-making in the cigarette area, literature
23 will point out that people, in fact, have a high
24 degree of awareness from various sources with
25 respect to the health risks in choosing first to

1 initiate smoking or secondly which brands they
2 choose, so those are included in here as part of
3 the general category of consumer decision-making.

4 Q. Did you undertake a specific review of the
5 literature?

6 A. Not for that topical area, no. It was an
7 outgrowth of the literature review with respect to
8 consumer decision-making.

9 Q. In the course of accumulating information
10 with respect to No. 6, did you ever run across
11 material in the published literature that reached
12 the opposite conclusion?

13 A. Not that I recall.

14 MR. GLASS: Would you please read back the last
15 question for me?

16 (Record read as requested.)

17 BY MS. FLOWERS:

18 Q. Professor, you relied on the FTC's
19 conclusions in your report; is that correct?

20 A. Can you point me to that place?

21 Q. It's on page 6.

22 A. Thank you. Yes.

23 Q. Can you identify for me which report this
24 is that you're citing to or quoting from?

25 A. The Federal Trade Commission staff report

1 in 1985. That's a Federal Trade Commission study
2 that was undertaken to review whether or not
3 alcohol and cigarette consumption was related to
4 total industry advertising expenditures, and that's
5 in my reliance materials somewhere.

6 Q. Well, I apologize, I could not find that
7 particular report. I found a few reports from 1985
8 so I would appreciate it if you could identify for
9 me just which one you're quoting from there.

10 A. It should be No. 65, Alcohol Advertising,
11 Consumption and Abuse, Appendix A, Bureau of
12 Economics, Federal Trade Commission. That's where
13 that statement was made. It's interesting while
14 that study is entitled Alcohol Advertising,
15 Consumption and Abuse, there was equally as much
16 discussion of tobacco in that particular study.

17 Q. Do you know whether or not this particular
18 statement is one that was adopted by the FTC?

19 A. Adopted for what?

20 Q. Are you familiar with the way the FTC
21 operates?

22 A. Yes, I am.

23 Q. Particularly the Bureau of Economics. Do
24 you know whether this was a working paper or if
25 this was a final report of the FTC?

1 A. It was not listed as a working paper, it
2 was listed as a report of the Federal Trade
3 Commission.

4 Q. Did you review any other FTC reports or
5 papers from 1985?

6 A. Not that I recall. I believe that was the
7 only one from 1985.

8 Q. Have you ever gone to the FTC to conduct
9 any research?

10 A. Not with respect to tobacco advertising,
11 no.

12 Q. Do you consider them an authoritative
13 source of information on cigarette advertising?

14 A. I think that when the Federal Trade
15 Commission does research on cigarette advertising
16 or consumption I would consider that an
17 authoritative source.

18 Q. I'm sure you're familiar with the reports
19 on dollars spent every year for cigarette
20 advertising and promotion.

21 A. Yes.

22 Q. Have you reviewed those historically?

23 A. Yes.

24 Q. Have you reviewed -- we know about the 85
25 report. Have you undertaken any other review of

1 the FTC's actions or reports over the years with
2 respect to cigarette advertising and promotion?

3 A. Yes, in the sense that the Federal Trade
4 Commission was quite active in trying to manage the
5 extent to which tar and nicotine levels would be
6 listed specifically or not listed specifically or
7 stated in advertising or not stated in advertising,
8 so that period was a quite extended period where
9 the Federal Trade Commission participated in the
10 tar and nicotine information discussion.

11 Q. Do you know what individual wrote the
12 quote that's on page 6?

13 A. I don't recall at the moment and I'm not
14 sure it was ever specified in the report.

15 MS. FLOWERS: I'd like to mark as Semenik 4 a
16 working paper, the Bureau of Economics, Federal
17 Trade Commission, Washington, D.C., entitled
18 Cigarette Advertising, Health Information and
19 Regulation Before 1970.

20 (Whereupon, Semenik Deposition
21 Exhibit No. 4 was marked for
22 identification.)

23 BY MS. FLOWERS:

24 Q. Is that a document you've seen before,
25 Professor?

1 A. You know, I've reviewed a lot of documents
2 by John Calfee. I'm not sure I've seen this
3 document. I think I've seen a discussion by Calfee
4 on this same issue in a different format, so I'm
5 not sure I've ever seen this document as a working
6 paper, but I've seen his discussion of this issue
7 in other places.

8 Q. Do you know Mr. Calfee?

9 A. Not personally, no.

10 Q. If I could direct you to page 1, sir,
11 under the heading introduction, "Cigarettes and
12 advertising have always been business partners.
13 The cigarette became a mass consumer product in the
14 1920s through innovative uses of advertising and to
15 this day probably no other consumer product is so
16 widely advertised wherever it is legal to do so."
17 Did I read that correctly, sir?

18 A. You did read that correctly.

19 Q. I guess there's two sentences. Let's take
20 the first one, although they sort of repeat the
21 same idea. My question is whether you would agree
22 or disagree with that statement.

23 A. I guess I disagree with both sentences.
24 "Cigarettes and advertising have always been
25 business partners." Cigarettes were widely used

1 before there ever was advertising, so I don't know
2 that -- maybe since advertising became a mass media
3 process that would be fair, but they have not
4 always been partners.

5 The second sentence is also very curious
6 to me, "The cigarette became a mass consumer
7 product in the 1920s through innovative uses of
8 advertising and to this day probably no other
9 consumer product is so widely advertised wherever
10 it is legal to do so," that's simply not true.
11 Cigarette advertising since the 1960s has never
12 constituted more than 3 to 5 percent of consumer
13 advertising and today is less than 1 percent of
14 consumer advertising, so to say that no other
15 consumer product is so widely advertised is a very
16 curious statement.

17 Q. You disagree with it then?

18 A. Yes, I do.

19 Q. When you said that the cigarette was
20 widely used before 1920 what do you base that on?

21 A. The history of tobacco and society. There
22 are many treatments of that. People rolled their
23 own cigarettes, it was used outside the United
24 States, so mass production of cigarettes was
25 something of the Industrial -- was a product of the

1 Industrial Revolution, so I think to say that the
2 cigarette became a mass consumer product in the
3 1920s is a fair statement. I think my comment was
4 that cigarettes and advertising have always been
5 business partners, that's not necessarily true
6 because cigarettes were used before the 1920s.

7 Q. Can we agree then that cigarettes became
8 mass produced in the 1920s?

9 A. Yes, we can agree on that, sure.

10 Q. Would you agree that consumption increased
11 around the same time?

12 A. Cigarette consumption increased steadily
13 until recent times, until the 1970s and 80s, so
14 yes, that's a fair statement, as well.

15 Q. If you could take a look at footnote 1 for
16 me, please, Professor, and I'd like to ask if you
17 agree with the quote that's there from Business
18 Week, December 5, 1953. "Cigarettes offer the
19 classic case study in every business school in the
20 country of how a mass production industry is built
21 on advertising." I take it from your prior
22 testimony you disagree with that statement, as
23 well?

24 A. I would disagree with that statement
25 because even in the 1950s economists were studying

1 how there was absolutely no relationship between
2 aggregate demand in the cigarette industry and
3 total industry spending.

4 Q. It's safe to assume then you would also
5 disagree with the next sentence, "Hence a common
6 phrase is 'the industry that advertising has
7 built'."

8 A. Yes, and that's a quote from Printers,
9 Inc., which is a trade publication.

10 Q. The Business Week article or the Printers,
11 Inc., article or this particular working paper,
12 were any of these materials things that you ran
13 across and perhaps discarded in the course of
14 accumulating your list?

15 A. No, I did not see these quotes or these
16 articles, not that I recall. I know I don't recall
17 seeing the quotes. If I saw the article I didn't
18 see the quote in the article.

19 Q. Have you looked at the Surgeon General's
20 report for 2000?

21 A. No, I have not seen that report. I'd also
22 like to in that paragraph point out why they come
23 to this very odd statement that cigarettes are the
24 most widely advertised. At the end of that
25 footnote it says, "Cigarettes have for many years

1 been among the most advertised consumer products.
2 In 1982 cigarettes led all national advertisers in
3 newspapers and were second in magazines." When you
4 take two very specific media, neither of which are
5 the leading media in terms of media categories,
6 then you could make that statement, but again,
7 cigarettes have never risen to more than 3 to 5
8 percent of spending across all consumer categories.

9 Q. Is that spending just in advertising or
10 does that include promotion?

11 A. In this particular case it says
12 advertising.

13 Q. I guess I was asking about the 3 to 5
14 percent that you referenced and then the 1
15 percent.

16 A. Since this says advertising it's 3 to 5
17 percent of all advertising, right.

18 Q. Does that figure include promotional or is
19 that just advertising?

20 A. That's just advertising.

21 Q. Do you know what happens to that
22 calculation when you add the promotional dollars?

23 A. There's about \$400 billion in promotion
24 advertising and the industry is at about \$6
25 billion. If we do the calculation it's still only

1 about 1 and a half or 2 percent, I guess.

2 Q. Have you seen the 1998 FTC report on the
3 reporting of --

4 A. Which report would that be?

5 Q. The one that's reporting the promotional
6 and advertising dollars.

7 A. I may have seen that report, I'd have to
8 take a look at it.

9 (Whereupon, Semenik Deposition
10 Exhibit No. 5 was marked for
11 identification.)

12 THE WITNESS: I've seen parts of this report
13 cited in publications but I have not seen the
14 report itself.

15 BY MS. FLOWERS:

16 Q. Do you know how much was spent on
17 advertising and promotion in 1998 by the cigarette
18 companies?

19 A. No, that's what I'm trying to find.

20 Q. It's page 19.

21 A. Here's the number. It's \$6.7 billion in
22 1998. Now, part of that number includes payment to
23 retail establishments, which is not directed at
24 consumers, so that number is a little bit larger
25 than it would be given that -- I think the

1 promotional allowances category at \$2.8 billion
2 would also include the margins paid to retailers
3 for carrying out those promotions, so not all of it
4 is directed strictly at consumers, so we have that
5 clarification.

6 Q. Do you consider that payment to retailers,
7 presumably for product placement, part of cigarette
8 marketing?

9 A. Yes, it is. But I guess if the question
10 is is it promotion or advertising that reaches the
11 consumer with a message then that would not be part
12 of the spending that would reach consumers with a
13 message.

14 Q. Do you agree that access is an important
15 element in selling goods generally?

16 A. Right, but it's not advertisement or
17 promotion, it's retailing, distribution.

18 Q. This \$6.7 billion for 1998 and \$5.6 for
19 97, do you know whether these figures include
20 dollars spent on public relations campaigns?

21 A. No.

22 Q. I'm sorry, that was a badly framed
23 question. No, you don't know, or no, it would not
24 include them?

25 A. No, I don't know.

1 Q. Have you undertaken any review or
2 computation of the amount of money that's been
3 reported to the FTC over the years by the tobacco
4 companies?

5 A. No, I have not undertaken that study.

6 Q. Would it surprise you if you learned that
7 they have reported spending over \$77 billion since
8 1963?

9 A. No, especially since total advertising and
10 promotion during that time would be in the
11 trillions of dollars. That's not a number that's
12 surprising to me. My guess is that the automobile
13 industry would have spent five or six times that
14 much money.

15 Q. Is that a guess, sir, or do you have a
16 basis for that statement?

17 A. I have a basis for that statement in that
18 each year the automobile industry outspends the
19 tobacco industry by five or six times.

20 Q. Have you undertaken any reviews of public
21 relations campaigns by let's take the Tobacco
22 Institute for a starter?

23 A. No.

24 Q. Have you undertaken any reviews of the
25 public relations campaigns or activities of R.J.

1 Reynolds Tobacco Company?

2 A. No.

3 Q. Have you undertaken any reviews of the
4 public relations activities of Philip Morris?

5 A. No.

6 Q. Is it safe to say the same is true for the
7 other tobacco companies?

8 A. Yes, it is correct that I have not for the
9 other tobacco companies, as well.

10 Q. Would you agree or disagree that the
11 tobacco companies have alternative ways of reaching
12 their consumer besides marketing?

13 A. Not besides marketing, no, there would be
14 no other way of reaching the consumer.

15 Q. Are you familiar with the term a
16 grass-roots organization?

17 A. Yes.

18 Q. Would that be a way of reaching a consumer
19 that wouldn't be marketing or in your view would
20 that be considered marketing?

21 A. That would be considered marketing.

22 Q. And direct mailings to an individual who
23 writes the company sending some pamphlets along,
24 would that in your view also be considered
25 marketing?

1 A. That's also marketing, as well.

2 MR. GLASS: Is this a good time to take a
3 five-minute break?

4 MS. FLOWERS: Sure.

5 (A short break was taken.)

6 BY MS. FLOWERS:

7 Q. Professor Semenik, we're back. You do
8 prefer being called Professor; is that correct?

9 A. Yes, that is correct.

10 Q. Are you ready to proceed?

11 A. Yes.

12 Q. On your reliance list, which is Semenik 3,
13 I believe you include a reference to the 1989
14 Surgeon General's report. Do you recall reviewing
15 that report and including it on your reliance list?

16 A. Yes, I do.

17 (Whereupon, Semenik Deposition
18 Exhibit No. 6 was marked for
19 identification.)

20 BY MS. FLOWERS:

21 Q. This is Semenik 6. This is not the entire
22 report, it's an excerpt, and I wanted to direct
23 your attention to the third page of that excerpt.
24 This is a terrible copy but on the third page under
25 blue collar workers, I believe this is what you

1 testified earlier but I want to get it clear for
2 the record. I'd like to know if you agree with
3 this statement under blue collar workers and I'll
4 read it for you. "Again, blue collar workers are a
5 major target of cigarette company advertising and
6 promotional campaigns." Do you agree with that
7 statement?

8 A. Well, just like any company that has a
9 broad application for its product, whether it's a
10 laundry detergent, a shampoo, an automobile, blue
11 collar workers represent an attractive market
12 segment because they are a fairly large band of
13 population, they have very large disposable income,
14 so for cigarette companies to advertise and promote
15 their brands to blue collar workers would be a very
16 common, natural thing like it is in many other
17 industries so I agree with that statement, yes.

18 Q. Were you aware that the smoking prevalence
19 of blue collar workers is higher than that of white
20 collar workers?

21 A. Yes, I was.

22 Q. Do you know the approximate percentage of
23 blue collar workers that smoked in their 1989
24 estimates?

25 A. That was 40 percent of blue collar workers

1 were smokers.

2 Q. Are you aware that blue collar workers
3 smoke more heavily than other segments of smokers?

4 A. I have seen studies suggesting that there
5 is slightly more consumption among blue collar
6 workers than other socioeconomic categories.

7 Q. Were you aware that blue collar workers
8 have more difficulty quitting or quit less than
9 other segments?

10 A. I've also seen at least one study which
11 suggested that blue collar workers find it more
12 difficult to quit, yes.

13 Q. Do you recall as we sit here today what
14 study that was?

15 A. The data I recall seeing was from the
16 COMMIT study, and I forget now exactly what that
17 stands for, but it was an adult smoking
18 intervention study.

19 Q. Did you take a look at the 1985 Surgeon
20 General's report in the course of your review for
21 this case?

22 A. Yes. Not for this case, no, but I have
23 reviewed that at some point in time with respect to
24 various inquiries.

25 Q. Is there some reason that you decided not

1 to include it in your reliance materials or did I
2 miss it?

3 A. If it's not included in there that may
4 have just been an oversight on my part, but I can
5 look through that. Since I did not rely on it for
6 my opinions in this case, not that I recall
7 specifically, it may not be a critical oversight.

8 Q. I saw reference to the 79 report and the
9 89 report but those were the only two I could
10 find.

11 A. That may have been my fault.

12 Q. Perhaps the 94 report -- the 1964 report,
13 have you looked at that one?

14 A. No, I don't believe so, not that I recall
15 at the moment, although it seems to me I have at
16 some point acquired and examined every Surgeon
17 General's report, but there are some -- maybe the
18 64 report was just not one that had information
19 that struck me as particularly relevant so I'm not
20 recalling it at the moment.

21 Q. Can you tell me how you came to acquire
22 and examine all of the Surgeon General's reports?

23 A. Well, certainly the University of Utah
24 library was quite an extensive library since that's
25 a class 1 research university. I have made trips

1 to the Library of Congress, so it would have been
2 in one of those two places, perhaps inter-library
3 loan at the University of Utah, but I don't recall.

4 Q. Was this a review you conducted in
5 conjunction with your testimony and opinions about
6 cigarette advertising?

7 A. Yes.

8 Q. Did this occur over the time frame
9 beginning 1993 when you started to compile this
10 list or was there one instance where you said I'm
11 going to go look at the Surgeon General's reports?

12 A. No, this would have been periodically over
13 time since 93.

14 Q. Do you know how many reports there have
15 been since 64?

16 A. I couldn't tell you offhand how many
17 different reports there have been.

18 Q. I realize you've testified in previous
19 depositions that you consider the materials that
20 you place on the list authoritative and I know that
21 you've included one or two and maybe three Surgeon
22 General's reports on this list. Would you consider
23 the additional -- all of the Surgeon General's
24 reports to be authoritative?

25 A. I would have to review each Surgeon

1 General's report because while I find the Surgeon
2 General's reports to be authoritative I do find
3 parts of the reports to be lacking in certain ways,
4 so in terms of a blanket statement I'd like to have
5 clarification with regard to it. I believe the
6 Surgeon General's office is a highly credible and
7 authoritative source, yes.

8 MS. FLOWERS: This will be No. 7.

9 (Whereupon, Semenik Deposition
10 Exhibit No. 7 was marked for
11 identification.)

12 BY MS. FLOWERS:

13 Q. Sir, I've handed you a copy of Reducing
14 Tobacco Use, a report of the Surgeon General,
15 2000. This, again, is not the entire report but it
16 is the executive summary. Is this the first time
17 that you've seen this portion of the report?

18 A. Yes, it is.

19 Q. Were you aware that this particular report
20 was coming out?

21 A. I was aware it was coming out. Do you
22 know when it came out approximately?

23 Q. I think in the last two or three weeks.

24 A. Yes, because I haven't seen it, no.

25 Q. Is it one that you had planned on

1 reviewing?

2 A. I would have most definitely.

3 Q. If you could look at the first page for
4 me, please, Professor, under the quote from David
5 Satcher, M.D., Ph.D., Surgeon General, the second
6 sentence, "It is clear that the major barrier to
7 more rapid reductions in tobacco use" --

8 A. I can't find that. The first page that's
9 unnumbered?

10 Q. The very first page, the portion in
11 italics, the second sentence.

12 A. Thank you, I find it now.

13 Q. "It is clear that the major barrier to
14 more rapid reductions in tobacco use is the effort
15 of the tobacco industry to promote the use of
16 tobacco products." I realize you haven't seen this
17 report and you haven't had a chance to study it,
18 but as a general proposition would you agree or
19 disagree with that particular statement?

20 A. I completely disagree with that statement.

21 MR. GLASS: Excuse me for a minute. If you're
22 seeing this for the first time and you need to
23 review it let me know and we can take a two-minute
24 break.

25 THE WITNESS: If there's a section where I need

1 to review it more then I will let you know. With
2 this particular sentence, though, I didn't feel I
3 needed to do that.

4 BY MS. FLOWERS:

5 Q. If you could turn to page 16, the
6 left-hand column, the last paragraph, the third
7 sentence, and we're reading from the executive
8 summary of the 2000 Surgeon General's report.

9 A. If I could read the beginning of that
10 paragraph and I'll let you know when I get to the
11 third sentence. It begins with counter marketing?

12 Q. Right.

13 A. Okay, I've read that now.

14 Q. The third sentence beginning, "For youth,
15 the CDC has estimated that the average 14-year-old
16 has been exposed to more than 20 billion imagery
17 advertising and promotions since age six, creating
18 a friendly familiarity for tobacco products." If
19 you assume that their estimate is correct, that the
20 average 14-year-old has been exposed to 20 billion
21 image advertising and promotions, would you agree
22 that that could create a friendly familiarity for
23 tobacco use?

24 MR. GLASS: Objection. I have a slight problem
25 with this question, which is that youth generally

1 is not in this case as I understand the Court's
2 rulings on various motions in limine, and so what I
3 would suggest is do you have some sort of proffer
4 as to why questions concerning youth generally
5 should be put to Professor Semenik at this point
6 given the ruling, which I happen to have and I'm
7 happy to read into the record if you're not
8 familiar with the ruling that I'm speaking about,
9 but this question it seems to me is directed toward
10 youth as opposed to blue collar workers 16 and
11 over, which is the only area that is permissible
12 for questioning in this matter.

13 MS. FLOWERS: I am familiar with the ruling and
14 as you know it says 16 and up. I think it's fair
15 for me to ask this question and I'd like to go
16 ahead and do it. I'm not going to spend a lot of
17 time on youth.

18 BY MS. FLOWERS:

19 Q. I'd like to know do you agree or disagree
20 with this statement?

21 MR. GLASS: You're aware that the ruling refers
22 to blue collar workers 16 and up, not 16 and up.

23 MS. FLOWERS: I really don't want to engage in
24 a debate but it's my understanding that they would
25 be included as a subset of this group.

1 MR. GLASS: I will allow you a little leeway
2 here, although I don't think we agree that blue
3 collar workers 16 and up are a subset of youth
4 estimated at 14 and older. With that proviso you
5 can answer.

6 BY MS. FLOWERS:

7 Q. Professor, do most 14-year-olds grow up to
8 be 16 years old in two years?

9 A. The answer to that question obviously is
10 yes.

11 Q. Would you agree or disagree that if take a
12 16-year-old was exposed -- a 16-year-old blue
13 collar worker, if he was exposed to more than 20
14 billion advertising promotions since age six could
15 that create a friendly familiarity for tobacco use?

16 MR. BURTON: Object to the form.

17 THE WITNESS: I can answer. This is the
18 problem I have had with various parts of several
19 Surgeons General's reports. Statements like this
20 are made without citations and without defining
21 friendly familiarity in any scientific terms. My
22 answer specifically is no because the scientific
23 literature and the credible literature points out
24 that youth smoking is influenced by peers, family,
25 curiosity, rebellion, consistently in literature

1 reported since the 1950s, so to make an uncited,
2 unscientific allegation like this is unsupported in
3 terms of the result and it's one that I don't agree
4 with.

5 BY MS. FLOWERS:

6 Q. So you're not accusing the Surgeon
7 General's committee of being unscientific in their
8 approach to analyzing the literature, are you?

9 A. I think in my prior statement I said that
10 different parts of Surgeon General's reports over
11 the years I have problems with because there will
12 be statements like this that are unsupported.

13 Q. If you assume that it was supported would
14 your answer be the same?

15 A. I know that it's not supported because
16 that's not how friendly familiarity works and it's
17 not related to 14-year-olds' decisions with respect
18 to making consumer choices about brands of
19 cigarettes.

20 Q. In one of your prior answers you went
21 through a litany of different things that you
22 believe have an influence on a consumer making a
23 decision to smoke or not smoke. In your view would
24 occupation be included as one of those factors?

25 A. No. Occupation -- well, let me clarify

1 this. With respect specifically to the decision to
2 smoke or not to smoke occupation is not related to
3 that decision.

4 Q. I've seen the chart that you've used in
5 the past with all of the decision-making influences
6 around it. I don't need to mark it, I'll just show
7 it to you.

8 A. Sure.

9 MS. FLOWERS: Well, let's go ahead and mark
10 it. This will be 8.

11 (Whereupon, Semenik Deposition
12 Exhibit No. 8 was marked for
13 identification.)

14 BY MS. FLOWERS:

15 Q. Did I hear you correctly that occupation
16 is not one of the factors in your view that
17 influences consumer decisions?

18 A. It can influence consumer decisions but
19 not with respect to smoking. For example, let me
20 give you an example of when it does and when it
21 doesn't. If I decide to use -- if a consumer
22 decides to use Tide laundry detergent or decides to
23 choose a particular brand of cigarette, that would
24 not be related to occupation. If an accountant
25 chooses a particular kind of software specifically

1 developed for the accounting profession, then that
2 kind of consumer choice would be related to
3 occupation or if a police officer chooses a certain
4 kind of firearm that's particularly well suited to
5 his or her occupation. But when it comes to
6 consumer products like tobacco, laundry detergent,
7 that would not be related to consumer occupation.

8 Q. Well, all of the analogies you just made,
9 couldn't you make the same analogy that a blue
10 collar worker when he goes to work and all of his
11 buddies at work are smoking, couldn't that have an
12 influence on his brand choice if they're all
13 smoking Marlboros?

14 A. It could and that's indicated on this
15 factor under peers, so that would be a very normal
16 kind of way factors influence consumer decisions,
17 yes.

18 Q. Would it also be included in the lifestyle
19 or the social class circles that you have here?

20 A. Lifestyle would provide opportunities for
21 consumers to make decisions and lifestyle could be
22 related to the decision about whether to begin
23 smoking or which brands to choose, yes.

24 Q. Do you have any information on which
25 brands blue collar workers typically smoke?

1 A. I have seen data from a study which
2 includes a category, and this is the COMMIT data,
3 as well, a category that includes blue collar
4 workers, but it's impossible to separate out the
5 blue collar workers. So it's somewhat difficult to
6 say. In a category that includes crafts, laborers,
7 service people and trades, those consumers, in
8 fact, choose Marlboro, Camel and Newport as some of
9 the leading brands, but that's not surprising
10 because those are the leading brands anyway. As I
11 said earlier, across many demographic socioeconomic
12 groups, those brands tend to have leading market
13 share.

14 Q. What about Kool?

15 A. Kool is a brand that has decent market
16 share in the market and also has -- I should say I
17 don't recall its market share among blue collar
18 workers.

19 Q. Back to the chart for just a moment,
20 Professor, the circle that's entitled situational
21 factors, could you tell me what that means?

22 A. Yes, I'd be glad to. Situational factors
23 can influence consumer decisions in the following
24 way: In different situations we may choose
25 different products or we may choose different

1 brands because the situation dictates we'll be more
2 satisfied with a different kind of product or
3 brand. For example, if I was going to take my
4 mother to dinner on her birthday I might choose one
5 restaurant. If the situation were I was going to
6 take a business colleague that I hadn't seen for a
7 couple of years to dinner I might choose a
8 different restaurant, and if I was going to take my
9 13-year-old daughter to dinner for her birthday I
10 would choose yet a different restaurant. So even
11 though we're talking about going to dinner, we come
12 up with various different choices as consumers
13 given the situation we're facing.

14 Q. With respect to the reliance materials
15 that you put together, in particular the
16 supplemental reliance list, can you tell me how you
17 came to gather that particular set of documents?

18 A. Let me go to that, which is the last two
19 pages, I believe. Yes. These are materials that I
20 gathered partly with respect to my ongoing research
21 in this area, and so it would have been provided to
22 the attorneys after my original reliance list, but
23 also some of these were very specific to my
24 investigation for this case, most particularly
25 starting with item No. 214, which are materials

1 from Asbestos Worker Magazine, which run from 214
2 to the end, 252.

3 Q. And how did you happen to come across
4 Asbestos Worker Magazine?

5 A. I wanted to understand if an allegation in
6 this case was that the tobacco industry or tobacco
7 companies were targeting an occupation, which I
8 found to be a very odd concept since marketers
9 don't target occupational groups for things like
10 laundry detergent or toothpaste as I said before.
11 Then I wanted to find media through which a company
12 could even target an occupational group
13 specifically or segment on an occupational group,
14 so when I heard there was a magazine called
15 Asbestos Worker Magazine, I was able to acquire
16 copies of this magazine through inter-library loan
17 as I recall while I was at the University of Utah,
18 and my thought was if a company was going to
19 segment on occupation and there were a magazine
20 published specifically for this occupation, then
21 the company would advertise in this magazine.

22 So when I got copies of Asbestos Worker
23 Magazine I found not only were there not any
24 cigarette ads but there were no ads at all, rather
25 there were these public service announcements by

1 the industry itself directed to asbestos workers
2 alerting them to the hazards of smoking and working
3 around asbestos, and there were ads and there were
4 articles, so this list from 214 through item
5 No. 252 are articles and public service
6 announcements that I found in the Asbestos Worker
7 Magazine.

8 Q. Does this material from 214 to 252
9 comprise everything you found in the Asbestos
10 Worker Magazine?

11 A. I believe it does.

12 Q. Was this everything that you found when
13 you did your review?

14 A. Yes, as far as I can tell this is
15 everything that I found.

16 Q. Who puts out Asbestos Worker Magazine?

17 A. The Asbestos Worker Magazine is published
18 by the asbestos workers' union or trade association
19 associated with that industry.

20 Q. Do you know how often it is published?

21 A. I'm sorry, I don't recall the frequency of
22 publication. I don't recall if it was quarterly or
23 monthly.

24 Q. Do you know how many asbestos workers were
25 in the union that put out this publication entitled

1 Asbestos Worker?

2 A. You know, that's a number that I have been
3 trying to locate and have not been able to yet.

4 Q. Do you have any idea how many asbestos
5 workers were reached by these given messages?

6 A. Again, that's a number I've been trying to
7 find but have not identified yet. My understanding
8 was from the publication when I read it that every
9 member of the union was provided with a copy of
10 this publication.

11 Q. Do you know what percentage of asbestos
12 exposed workers were members of a union?

13 A. Again, that's another number that I'm
14 trying to track down.

15 Q. Back to the asbestos worker publication
16 for a moment, what have you done to try to
17 determine how many asbestos workers would have
18 received these particular messages?

19 A. Well, I'm trying to work with census data
20 from those time periods to see if I can find
21 classifications of occupations. I intend on trying
22 to get a hold of the asbestos workers -- I don't
23 know if there is an asbestos workers union anymore
24 since the substance has been banned. I don't think
25 I can find anyone who would fit that category, so

1 I'm trying to piece together some other way to do
2 that.

3 Q. Did you look at any other publications
4 other than the Asbestos Worker Magazine?

5 A. Well, as this list indicates, there are
6 other publications that I run across in doing my
7 research, so the proceedings of the American
8 Advertising Academy, yes, in my ongoing research I
9 run across a lot of publications.

10 Q. I meant specific to -- my understanding
11 was that 244 through 252 all appeared in the
12 Asbestos Worker Magazine.

13 A. That is correct.

14 Q. My question was whether you had undertaken
15 a review of any other publications that an asbestos
16 exposed individual might have received.

17 A. I'm sorry, I didn't understand that part.
18 No. As I stated earlier if the allegation was that
19 the tobacco industry was segmenting the market
20 based on occupation then this would be the one
21 clear case where an occupational group would
22 receive a specific publication.

23 Q. You don't dispute that they segment by
24 occupation, do you?

25 A. Oh, yes, I do, as I said earlier.

1 Q. Then I am confused. I thought you agreed
2 that the tobacco industry segmented and targeted
3 blue collar workers.

4 A. That's correct.

5 Q. But you don't believe that they segment
6 and target by occupation?

7 A. That's correct because those are two
8 totally different things.

9 Q. Could you explain the difference, please?

10 A. Sure. Blue collar is a broad band and
11 very large slice of a population dealing with a
12 variety of occupations who have similar lifestyle
13 and similar work styles, but occupations within
14 that are separate and very distinct. For a
15 consumer product like, as I mentioned before,
16 toothpaste, laundry detergent, paper towels,
17 cigarettes, motor oil, we could go through a long
18 list of consumer products, you would find the
19 market segment categorized as blue collar large
20 enough and having enough income to form a marketing
21 campaign around, but I wouldn't put together a
22 campaign for Pennzoil that said this is the motor
23 oil for sheetrockers. It just wouldn't make any
24 economic sense to do that.

25 Q. Wouldn't it make economic sense to say

1 this is Pennzoil, this is the motor oil for
2 automobile industry workers? Don't they have a
3 heightened interest in motor oil?

4 A. They might, but why would I want to leave
5 out a lot of other -- I would target that only and
6 leave out a broad class of consumers with similar
7 lifestyles and interests which would find the same
8 message appealing and meaningful to choose that
9 brand because I frankly have never seen an ad
10 except for, again, a very narrow product like an ad
11 for accountants picking software, I've never seen
12 an ad targeting an occupational group.

13 Q. Perhaps this is just a semantic difference
14 but perhaps not. Is your view that the occupation
15 is too small of a subset, would be too small of a
16 subset of blue collar workers for it to make sense
17 for an industry to target?

18 A. That's why we don't see -- except, again,
19 for very occupationally specific products, the kind
20 of stilts that a sheetrocker uses or maybe the kind
21 of chains that a truck driver uses in the
22 occupation, but for consumer products it would make
23 no economic sense because it would narrow the
24 segment to too small a group to target an
25 occupation.

1 Q. Do you have a sense of what types of
2 occupations historically have been subject to
3 asbestos exposure?

4 A. No, which I think would also be a problem
5 for any marketer who would want to try to do that.

6 Q. I understand that you've looked at polling
7 data in the past in conjunction with some of your
8 opinions. Have you looked at any of the polling
9 data specific to asbestos exposed individuals who
10 smoke and the attempt by the public health
11 community to inform them of the risks they face?

12 A. I've seen no polling data in that regard.
13 Again, I've only seen the editorials and public
14 service announcements in the Asbestos Worker
15 Magazine that attempt to do that.

16 Q. In putting together these excerpts from
17 the Asbestos Worker Magazine how did they inform
18 your opinion? How do you see them as helping form
19 the basis for your opinion?

20 A. First, since there was no cigarette
21 advertising that appeared in Asbestos Worker
22 Magazine, that demonstrated to me that there was --
23 well, there was no evidence of targeting asbestos
24 workers since that would be such an ideal place to
25 place ads of that sort. But the other part of this

1 also demonstrated to me that asbestos workers were
2 getting regular and very explicit information about
3 the risks of smoking and working around asbestos,
4 which in my model of factors would influence
5 consumer decisions, this would be a media source of
6 information as part of this decision-making
7 process, so I guess there were two parts to how it
8 informed my decision.

9 Q. Are you of the opinion that asbestos
10 exposed individuals who smoked were fully informed
11 of the risks that they encountered?

12 A. It's my opinion that asbestos workers who
13 smoked had available to them from a wide variety of
14 sources, including a very specific source for their
15 industry information about the risks of smoking.

16 Q. If we could put aside just for a moment
17 the general information of smoking and just focus
18 for a moment on synergistic effect, have you formed
19 an opinion about whether asbestos exposed
20 individuals who smoke were fully informed of the
21 risks they faced from the synergistic effect of
22 tobacco and asbestos?

23 MR. GLASS: Objection. I don't think that
24 there's been any discussion about the synergistic
25 effect. Can you explain what you mean by that?

1 BY MS. FLOWERS:

2 Q. Can you answer the question, sir?

3 A. That to me, I believe the word synergistic
4 is a medical term so I wouldn't be able to express
5 an opinion about a medical issue.

6 Q. So you haven't formed an opinion? I'm
7 trying to figure out what you're going to talk
8 about at trial.

9 A. Yes.

10 Q. Have you formed any opinion as to whether
11 these asbestos workers who smoked were fully
12 informed of the synergistic risk of asbestos and
13 tobacco together, yes or no?

14 MR. BURTON: Object to form.

15 THE WITNESS: I have to answer yes or no? If I
16 have to answer yes or no then I can't answer.

17 BY MS. FLOWERS:

18 Q. Is it that you just don't know whether
19 you've formed an opinion on the particular issue of
20 synergistic effect?

21 A. Well, is synergy a medical term?

22 Q. Yes.

23 A. Then I construe that to be a medical
24 question that would be beyond my expertise.

25 Q. I think you testified earlier that you

1 didn't have an understanding of what synergy
2 between asbestos and tobacco is. What I'm simply
3 trying to establish is I assume you're not going to
4 be offering an opinion about what other people knew
5 about synergy?

6 A. I don't have an opinion on synergy because
7 it's a medical term. I do have an opinion on the
8 fact that the Asbestos Worker Magazine had two
9 dozen articles about nature and risks of smoking,
10 particularly for asbestos workers. So to the
11 extent that those discussed that problem, then
12 asbestos workers would have had regular and
13 extensive exposure to a discussion about synergy.

14 Q. And in your view were those references
15 over a 25-year period continuous and systematic?
16 Is that what you're saying?

17 A. Yes, it is.

18 Q. Irrespective of the fact that you found
19 these and that they're there and the information
20 was available, have you formed any opinions or done
21 any research as to the effects of these campaigns,
22 whether they worked?

23 MR. BURTON: Object to form.

24 THE WITNESS: Given the fact that these
25 campaigns were, A, directed specifically at

1 asbestos workers by their own union and trade
2 association which had the best interest of the
3 workers in mind, and B, the asbestos workers were
4 exposed to the broad and general information
5 available about the risks of smoking, then I
6 believe that asbestos workers were at least if not
7 more aware than the average consumer about the
8 risks of smoking.

9 BY MS. FLOWERS:

10 Q. Are you limiting that opinion to the risks
11 of smoking or are you intending to opine on
12 asbestos and tobacco, the synergistic effect,
13 interaction, whatever we want to call it?

14 A. To the extent that these articles dealt
15 with the synergistic effect then they would have
16 had that information, as well.

17 Q. I understand. I'm trying to determine if
18 you have formed any opinions about what effect they
19 had, and if so, what is the basis for those
20 opinions?

21 A. And I'll repeat my last answer, which was
22 given that there was a very specific campaign
23 launched by the union and trade association and it
24 had the best interest of the asbestos worker in
25 mind, plus the broad-based media discussions of the

1 risks of smoking, then asbestos workers would more
2 than likely have better knowledge than the average
3 consumer.

4 Q. That's a presumption, isn't it, sir?

5 A. Well, since we have polling data that
6 shows as early as the 1970s and 60s actually that
7 over 90 percent of consumers were aware of the
8 risks, then there's no reason to believe that
9 asbestos workers would not have had that same level
10 of awareness, if not higher because of the specific
11 campaign directed at them.

12 Q. So you told me earlier that you hadn't
13 looked at any polls with respect to asbestos and
14 smoking exposed people to determine what their
15 level of knowledge was.

16 A. Correct.

17 Q. And again, I want to focus for now just on
18 the two together.

19 A. The two together meaning the asbestos
20 workers and polls?

21 Q. No, I'm sorry, the two together being
22 asbestos and tobacco acting together. Do you
23 intend to extrapolate from the earlier Gallup data
24 to form the basis for your opinions that they knew
25 everything they needed to know?

1 MR. GLASS: Objection to the form.

2 THE WITNESS: I can only restate what I stated
3 earlier. Since this group of consumers had all the
4 available information that was available to
5 consumers generally plus the very specific
6 information from their highly credible trade
7 association and union, my opinion would be that the
8 awareness level of this group would be at least as
9 high as consumers in general.

10 BY MS. FLOWERS:

11 Q. Of synergistic effect?

12 A. Of the effects of tobacco on smoking and
13 the synergistic effects being the specific
14 discussion from their trade association. They
15 would have had the opportunity to review that
16 information.

17 Now, if there's a specific poll you have
18 that shows that that's different then I would be
19 very much interested in seeing it.

20 Q. I'm just attempting to determine what the
21 parameters of your testimony are and the parameters
22 of the opinions that you've formed thus far. I
23 understand that you've formed opinions that were
24 expressed in No. 6. Everybody generally knew
25 everything they needed to know about smoking, but

1 this is a much more specific question. I'm trying
2 to determine if you intend to testify on the issue
3 of asbestos workers' knowledge of synergistic
4 effect.

5 MR. GLASS: Objection. He's now answered that
6 three times.

7 MS. FLOWERS: I think what I'm hearing is yes
8 but I think I am entitled to know.

9 THE WITNESS: I'm entitled to know whether I'm
10 being asked to give an opinion on a medical issue
11 because if I am that's not something I would do and
12 I shouldn't do.

13 BY MS. FLOWERS:

14 Q. Wouldn't you agree that a lot of the
15 information that is at issue in these cases that
16 was out there was of a medical nature?

17 A. That's true, but the word synergy is a
18 term of art, I believe. The word lung cancer is
19 understood by the average consumer, the word
20 emphysema is understood by the average consumer.

21 MR. MUNSON: I think your question assumes that
22 there's a synergistic effect and that can be part
23 of the stumbling block because you're asking the
24 witness to make that assumption with you and I
25 think he's testifying that he doesn't know that to

1 be a fact.

2 THE WITNESS: If the question is had asbestos
3 workers heard about this thing called synergistic
4 effect, the information in Asbestos Worker Magazine
5 discusses that issue. If you asked me does that
6 mean that the asbestos workers have that knowledge,
7 my answer is that that's the kind of credible
8 information that would be considered relevant to
9 the asbestos workers and would produce a level of
10 awareness.

11 BY MS. FLOWERS:

12 Q. And on what do you base your conclusion
13 that they were aware?

14 A. Based on the general level of awareness
15 during all those time periods, 60s, 70s, 80s and
16 90s of the average consumer who had less
17 information than asbestos workers had about the
18 health risks of smoking.

19 Q. I think you testified in a Florida case
20 that the level of the risk drives a person's
21 understanding of that risk. Do you recall that
22 testimony?

23 MR. BURTON: Object to the form.

24 THE WITNESS: No, I do not recall that
25 testimony.

1 BY MS. FLOWERS:

2 Q. As we sit here today, Doctor, you couldn't
3 tell me what the relative increased risks from
4 interaction of asbestos and tobacco are; isn't that
5 correct?

6 A. That's correct.

7 Q. And you're an educated individual?

8 MR. GLASS: Objection.

9 THE WITNESS: To some degree. On marketing
10 matters I would characterize myself as an educated
11 individual.

12 BY MS. FLOWERS:

13 Q. How is it you can then extrapolate back
14 and conclude that these asbestos workers knew the
15 risks that they faced?

16 MR. BURTON: Object to form.

17 MR. GLASS: Objection to the form.

18 THE WITNESS: This would be particularly
19 relevant to their life occupation. They had a
20 publication that was regularly informing them about
21 the risks of their occupation, which is something I
22 didn't have regularly coming to me from my trade
23 association. So based on the fact that the average
24 consumer can have a very, very high level of
25 awareness of the risks of smoking, then asbestos

1 workers who were being given special attention by
2 their own trade association it is my opinion
3 because of the special media attention would have a
4 very high level of awareness.

5 BY MS. FLOWERS:

6 Q. And the bases for that opinion are
7 contained in 214 through 252?

8 A. And the fact that polling data of average
9 consumers shows that their exposure to generalized
10 media produced a very high level of awareness.
11 Generalized media, peers, friends, family, doctors,
12 all those sources of information.

13 Q. Have you conducted a review -- I know
14 you've looked at these particular Asbestos Worker
15 excerpts, but do you know how many of them actually
16 talk about the interaction between asbestos and
17 tobacco?

18 A. I would have to review them for that
19 particular and specific issue.

20 Q. Do you have any idea what the advertising
21 budgets were of say the National Cancer Institute?
22 Some of these that you've chosen were published by
23 the American Cancer Society or the National Cancer
24 Institute. Do you have any idea how much money
25 they spent trying to get this message, the smoking

1 danger, out to asbestos workers?

2 MR. GLASS: During what time period?

3 MR. BURTON: Object to form.

4 MR. GLASS: Can we have a time period?

5 BY MS. FLOWERS:

6 Q. Have you reviewed any data on budgets for
7 the National Cancer Institute ever?

8 A. No, and as related to our prior
9 discussion, I wouldn't need to because since 90
10 percent of consumers were aware, then whatever
11 their budget was, it was sufficient to get a very
12 high level of awareness in the market.

13 Q. In fact, it was futile of them to even do
14 it if the knowledge was already out there? Is that
15 your view?

16 A. If the knowledge was already out there and
17 since it was such a high level then maintaining
18 that level of awareness and informing consumers as
19 they come into a lifestyle area where they face
20 that choice would be necessary to continue to
21 inform the public.

22 Q. Have you looked for any published
23 literature that would have discussed or analyzed
24 the effect of campaigns such as the ones you
25 identified that attempted to inform asbestos

1 workers of the increased risks they faced from
2 smoking?

3 A. In the review of literature I did not run
4 across such a report, no.

5 Q. Do you know what the asbestos awareness
6 campaign was?

7 A. Not described like that. I may have run
8 across it in the Asbestos Worker.

9 MS. FLOWERS: This will be a cumulative 9.
10 (Whereupon, Semenik Deposition
11 Exhibit No. 9 was marked for
12 identification.)

13 BY MS. FLOWERS:

14 Q. I just wanted to ask if you recognize
15 those as the materials that you selected.

16 A. Yes, I do. I haven't counted them but I
17 presume they're all here.

18 Q. I did count them and I counted 17 so that
19 can't be right because you have more entries than
20 that. They must be stapled together.

21 A. There were I think some publications that
22 had more than one. But it's a representative, I
23 can agree to that.

24 Q. Did you provide to the attorneys that
25 you're working with copies of all of the materials

1 that are on this particular list?

2 A. Yes.

3 Q. This was what was produced to the
4 plaintiffs.

5 A. This should be all of them then.

6 Q. I believe it is, I've gone through them
7 and I think they're all there, but if there were
8 more that you knew of I'm interested in knowing
9 that.

10 A. No, not that I know of.

11 Q. Have you made any requests or done any
12 independent research to attempt to locate polling
13 data of asbestos workers?

14 A. Well, in the process of researching this
15 issue and this occupation I was looking for data
16 about asbestos workers. I wasn't specifically
17 looking for polling data but I didn't find any,
18 either. On the other hand, this occupation would
19 be included in general polling data from eras of
20 the Gallup poll.

21 Q. I understand, sir. I'm trying to get you
22 to still focus just for a moment on the interactive
23 effect and separate out if you will general
24 awareness issues with respect to smoking.

25 A. I don't think I can do that because this

1 group was aware of general health issues, as well.
2 Given that they were part of the population,
3 employed in the population, there's no reason to
4 believe that they were any different from other
5 consumers in the population with respect to general
6 awareness of health issues.

7 Q. Is it your testimony that blue collar
8 workers or asbestos exposed smokers were at no
9 increased -- I'm sorry, forgive me.

10 MS. FLOWERS: Could you read that answer back
11 for me?

12 (Record read as requested.)

13 BY MS. FLOWERS:

14 Q. Sir, if there was no reason to believe
15 they were any different with respect to general
16 health issues, is it your opinion that they held
17 the identical knowledge as the general public did
18 with respect to smoking risks?

19 MR. BURTON: Object to form.

20 THE WITNESS: I have no reason to believe that
21 they would not have that same level of awareness.
22 You have an article here entitled Cigarettes Will
23 Kill You. Few of us have ever been communicated to
24 so strongly about the risks of health, the risks to
25 health of smoking, so this group was particularly

1 able to be exposed to information about health
2 risks.

3 BY MS. FLOWERS:

4 Q. And the basis for that opinion is what you
5 have in front of you; is that correct?

6 A. Right, a publication directed to this
7 occupational group by its own union and trade
8 association.

9 Q. But having a general knowledge is not the
10 same as having a knowledge that you are at a
11 dramatically increased risk, is it?

12 MR. BURTON: Object to form.

13 MR. GLASS: Objection to form.

14 THE WITNESS: These articles are designed to
15 educate this group of workers about their situation
16 regarding cigarettes and asbestos exposure. If
17 that's called synergy or one of those issues is
18 synergy, then that's included in here, as well.

19 MS. FLOWERS: Could you make that 10?

20 (Whereupon, Semenik Deposition
21 Exhibit No. 10 was marked for
22 identification.)

23 BY MS. FLOWERS:

24 Q. Have you had a chance to review Semenik
25 No. 1, the Asbestos Awareness Campaign by Vicki S.

1 Freimuth and J. Paul Van Nevel? I take it this is
2 an article that you did not run across in your
3 literature review?

4 A. No, this is not an article I have seen.

5 Q. Well, if you assume with me that this
6 article attempted to evaluate the effectiveness of
7 campaigns by the National Cancer Institute designed
8 to educate asbestos workers about health risks,
9 would you feel that this might be something that
10 would inform your opinion?

11 MR. GLASS: Objection to the form.

12 THE WITNESS: Well, first I would need to
13 review that entire article because I'm not sure
14 whether this is informing asbestos workers. The
15 title says reaching the public about the asbestos
16 awareness issue, so it doesn't appear from the
17 title that it's directed toward asbestos workers,
18 and these are 60-second and 30-second public
19 service announcements. This looks to me like it's
20 a broad awareness campaign, which would just,
21 again, add to the whole mix of information.

22 But I'd need to read it to find out how it
23 was done and what the purpose was. There's no
24 abstract, which unfortunately could be helpful.

25

1 BY MS. FLOWERS:

2 Q. So I take it you were not aware that the
3 NCI engaged in the late 70s and the early 80s in an
4 additional campaign to try to educate asbestos
5 workers about health risks; is that fair?

6 A. Well, it isn't fair in the sense that I
7 don't know that this was directed toward asbestos
8 workers.

9 Q. If you assume with me that it was?

10 A. No, I had not seen this study, no.

11 Q. It's I think more of a review of what took
12 place. If you would turn to page 165 for me,
13 please.

14 A. I have that page.

15 Q. The bottom of the page, last paragraph.
16 "Two knowledge objectives of the campaign were not
17 obtained. There was little knowledge about the
18 importance of not smoking." If you assume that
19 that's true, I understand you want to study the
20 article with more detail but if you assume that
21 finding is true after the National Cancer Institute
22 having tried to educate asbestos workers, would you
23 agree that that is inconsistent with the opinions
24 that you just expressed?

25 MR. BURTON: Objection to the form.

1 MR. GLASS: You're asking him to really form an
2 opinion on something he hasn't read after just
3 reading two sentences with him. Would you like the
4 Professor to take 10 or 15 minutes and review the
5 article and he'd be happy I'm sure to answer your
6 questions? But this is really unfair for to you do
7 this to him having never seen this before.

8 BY MS. FLOWERS:

9 Q. Professor, I think I've established,
10 although I admit that I'm not certain at this
11 point, that you intend to offer an opinion about
12 what smoking asbestos workers knew about the health
13 risks; is that right?

14 A. I'm saying that there was a broad level of
15 awareness among the population and that asbestos
16 workers were part of the population and that they
17 also had a specialized publication directed to them
18 about those health risks.

19 Q. But my question is a more specific one. I
20 understand that. Are you going to offer an opinion
21 on what they knew or didn't know about asbestos and
22 smoking working together?

23 A. I can't tell you for any one individual
24 what that individual knew.

25 Q. I understand.

1 A. But I can say that as a group, this group
2 would have awareness and knowledge based on levels
3 of awareness and knowledge at periods of time in
4 the U.S. Now, I'd be glad to read this article,
5 find out whether the methodology is proper, whether
6 these researchers conducted this in a capable and
7 credible way. I'd like to find out something about
8 their backgrounds, whether they have Ph.D.s,
9 whether they're trained in research. I'd like to
10 look at the Journal of Communication and find out
11 in 1981 the reviewer list and who the reviewers
12 were, and then I'd be able to decide whether this
13 was a credible source that would inform my opinion
14 or not.

15 Q. Well, if we do that it would take an
16 awfully long time today.

17 A. I understand. That's the way I do my
18 research.

19 Q. If we just take as a hypothetical that
20 there was a stepped up campaign in the late 70s and
21 early 80s to try to educate these people and that
22 there was little knowledge among those people about
23 the importance of not smoking around asbestos,
24 would that affect your opinion in any way?

25 MR. BURTON: Object to the form.

1 MR. GLASS: Objection to form.

2 THE WITNESS: I can't accept that hypothetical
3 because you could treat that hypothetical on an
4 extremely flawed research methodology, in which
5 case I could not accept the premise.

6 BY MS. FLOWERS:

7 Q. What if it's based on Gallup polls? Do
8 you find those to be credible sources of
9 information?

10 A. I look at every Gallup poll specifically
11 for the way the question is worded, the population
12 survey technique, so I don't accept Gallup --
13 although I find Gallup to have been credible in
14 survey I wouldn't have accepted them carte blanche
15 without looking at every particular study.

16 Q. Would it have been interesting to you if
17 there were Gallup polls during the same time period
18 that found that asbestos workers did not understand
19 the importance of not smoking?

20 A. Those are Gallup polls that I would like
21 to see and review, yes.

22 Q. Would you agree that absent some type of
23 feedback like a Gallup poll, it's difficult to
24 determine the effect of campaigns like the one that
25 you identified in Semenik 9?

1 A. Polls would certainly be informative.

2 Q. Are you aware of anybody in research that
3 takes issue with your conclusion that the public
4 was fully informed about the health risks of let's
5 just take smoking for now?

6 MR. BURTON: Object to the form.

7 THE WITNESS: I know that there are people who
8 claim that as long as someone is still smoking they
9 must not be aware, which is something I disagree
10 with, so I've heard that allegation if that's the
11 kind of allegation you're referring to.

12 BY MS. FLOWERS:

13 Q. Well, I'm not talking so much about
14 allegations here, Professor, I'm talking about
15 literature, the FTC or independent researchers
16 going off and doing studies of the same things
17 you've looked at. Are you aware if some of them
18 have found alternative conclusions to the ones
19 you've drawn?

20 A. Let me restate that. I've seen literature
21 that a person has come to a conclusion that even
22 though there's 90 percent awareness of the
23 relationship between cigarettes and fatal disease
24 that somehow that does not indicate awareness.
25 That's a conclusion I've read, which of course I

1 don't agree with and don't understand.

2 Q. Do you have any distinction in your mind
3 between awareness and understanding?

4 MR. BURTON: Object to the form.

5 THE WITNESS: Awareness represents a
6 consumer's -- well, understanding and awareness to
7 me are basically the same thing. Now, we can talk
8 about specific instances if you want to clarify it
9 any further.

10 BY MS. FLOWERS:

11 Q. In your review of materials from the
12 Federal Trade Commission did you ever examine the
13 reports that they looked at prior to changing the
14 warnings in the early 80s?

15 A. I'm not sure which reports. It's possible
16 in my research I looked at the same studies they
17 looked at, but I don't remember the citations of
18 literature that accompanied the Federal Trade
19 Commission's recommendations about changes in the
20 warnings.

21 Q. Do you recall that one of the reasons they
22 wanted the warnings changed was because they were
23 ineffective or it was ineffective?

24 MR. GLASS: Objection.

25 THE WITNESS: And this is where I have a

1 completely different opinion from those analysts
2 who say it was ineffective because people were
3 still smoking. People can choose to smoke in the
4 context of a full awareness of the risk, and the
5 word ineffective in terms of the Federal Trade
6 Commission or health officials is it can only be
7 effective if someone quits smoking, which is not
8 true. It can be completely effective and an
9 individual can choose to continue smoking.

10 BY MS. FLOWERS:

11 Q. Would you have disagreed with the FTC's
12 decision to change the warning?

13 A. In some ways I might answer that question
14 yes because if their belief was that a change in
15 the warning would heighten the level of awareness,
16 that would almost be impossible to achieve at that
17 point given the high 90 percent awareness of health
18 risks. I think their belief was in their
19 terminology effectiveness would relate to smoking
20 cessation. That would have to be their decision,
21 although my decision would be given the levels of
22 awareness are so high I don't believe you can
23 achieve any higher levels of awareness.

24 Q. Would your answer be the same if you
25 assume that there is a subset of the smoking

1 population that's at a dramatically increased risk
2 of contracting lung disease?

3 MR. GLASS: I don't think I understand the
4 question.

5 BY MS. FLOWERS:

6 Q. Do you understand the question?

7 A. Could you repeat the question, please?

8 Q. I think what you testified to is that you
9 didn't necessarily see any need to change the
10 warning because the awareness was so widespread.
11 My question is would your answer be the same if you
12 assume there is a given subset of the smoking
13 population that is at say a 90-fold increased risk
14 of contracting lung cancer?

15 MR. BURTON: Object to form.

16 THE WITNESS: Well, if an individual is aware
17 that they may contract lung cancer then I think
18 that that level of awareness is sufficient to say a
19 person is aware. Now, whether it's a one-time or
20 90-time factor, I quit smoking for health reasons
21 because I received public information about the
22 risks of smoking and lung cancer, emphysema, heart
23 disease. Now, whether my personal situation made
24 me more or less at risk than my neighbor was not
25 relevant to that decision.

1 BY MS. FLOWERS:

2 Q. Were you ever exposed to asbestos that you
3 know of?

4 A. I'm not aware whether I was or not. I
5 lived in several old homes growing up.

6 Q. Did you ever do any sort of construction
7 work or trade work during college?

8 A. I worked in factories, and I don't know if
9 those factories had asbestos in them or not.

10 Q. What kind of factories?

11 A. Automobile factories.

12 Q. Did you ever do any brake lining work?

13 A. Not in the factory I worked in, no. It
14 did not have brake assembly in the factory.

15 Q. If you had been exposed to asbestos and
16 were at a 90 times increased risk, wouldn't you
17 have wanted to know that?

18 A. I knew there were health risks associated
19 with smoking and those were sufficient to me to
20 make the decision to quit smoking.

21 Q. And when did you make that decision? Was
22 that after you completed your Ph.D.?

23 A. That's correct.

24 THE WITNESS: I wonder if we could take a break
25 for lunch. Is that a possibility?

1 MR. MUNSON: It's more than a possibility, it's
2 done.

3 (A lunch break was taken.)

4 BY MS. FLOWERS:

5 Q. Professor Semenik, welcome back. In your
6 expert report on page 2 you state that cigarette
7 advertising is designed to maintain brand loyalty.
8 In effect that's an opinion you've expressed
9 numerous times during testimony; is that correct?

10 A. Yes, and I'd like to just clarify slightly
11 on page 2, it says that cigarette advertising like
12 advertising for other consumer products that are in
13 the maturity stage of the product life cycle, that
14 advertising is designed to maintain brand loyalty
15 and create brand switching. So just for the
16 context, cigarette advertising for products in the
17 mature stage of the product life cycle.

18 Q. Are there any cigarettes in your view that
19 aren't in the mature phase?

20 A. No, cigarettes as a category are in the
21 mature product category stage.

22 Q. Since you raised that let me ask you
23 this: Would you make the same statement with
24 respect to the some of the new products that are
25 coming out like Accord or the Eclipse?

1 A. Those products are called adaptive
2 replacements, and that's a term of art, which is
3 one of the pieces of terminology that's associated
4 with product life cycle management, and to give you
5 an example outside of the tobacco industry for
6 clarity, an automatic coffee maker like a
7 Mr. Coffee is an adaptive replacement for a drip
8 coffee maker.

9 So when there are new versions in a
10 product category we call those adaptive
11 replacements. My opinion is that some of the new
12 smoking devices still have the purpose of smoking
13 tobacco in which case I would still put them in the
14 mature product category, even though it's an
15 alternative version.

16 Q. I'm sorry, I'm just trying to be clear.
17 Did you say some of them you would put in the
18 mature category or all of them?

19 A. No, all of them.

20 Q. Do you anticipate offering any opinions
21 about these adaptive replacements in this case?

22 A. Only if I'm asked a question such as that
23 one, in which case I would offer that opinion.

24 Q. So it would follow then for those
25 particular -- let's just take Eclipse and Accord,

1 if they're in the mature product category,
2 advertising in your view cannot create a demand for
3 those products; is that your view?

4 A. My view is it cannot create primary demand
5 or demand for smoking initiation. It can create
6 demand for that brand among all the brands of
7 cigarettes available.

8 Q. If I could direct you back to the opinion
9 that cigarette advertising is designed to maintain
10 brand loyalty, I'd like to know what you mean by
11 maintain brand loyalty.

12 A. All right. The concept of brand loyalty
13 is defined in various ways, but a universally
14 accepted definition would be that a consumer
15 chooses the same brand within a product category a
16 majority of times in making consumer decisions.

17 Q. They keep buying the same brand?

18 A. They keep buying the same brand.

19 Q. You've testified previously that you don't
20 believe advertising has any effect on quitting,
21 quit rates.

22 A. That's correct.

23 Q. Can you tell me what it is you base that
24 particular opinion on?

25 A. My opinion is based on the fact that

1 advertising is used by consumers to make
2 assessments about which brands they will choose to
3 use. The decision about quitting is going to be --
4 quitting smoking is going to be based on other
5 information sources and other factors which
6 influence the consumer decision-making process as
7 they're displayed in the chart we were talking
8 about earlier or the model we were talking about
9 earlier.

10 Q. Is it possible in your view for an
11 advertising campaign to have a reassurance effect
12 on a smoker?

13 MR. BURTON: Object to the form.

14 THE WITNESS: No, that's not my opinion.

15 BY MS. FLOWERS:

16 Q. Your opinion is that it could not?

17 A. My opinion is it does not have a
18 reassuring effect.

19 Q. And besides the multifactorial, is there
20 anything else you can point me to in support of
21 that particular opinion?

22 A. Well, that chart demonstrates the way in
23 which advertising plays a role in the decision
24 process, so in one sense all the literature in
25 consumer behavior is embodied in a chart like that

1 where the role of advertising is specifically
2 portrayed.

3 Q. Is this a chart that you put together?

4 A. This is a chart I put together.

5 Q. Is it from a textbook?

6 A. It is from one of my textbooks and it's
7 from the teaching materials from both an
8 introductory marketing text and an advertising
9 text.

10 Q. Has it always been in this form or has it
11 gone through any different iterations?

12 A. It's gone through some iterations where
13 the publisher likes to see it a little more
14 spritely and with some different colors to the
15 boxes and things like that.

16 Q. In the course of your research and
17 learning more about your field have you ever made
18 any changes, other than spritely ones, to this
19 chart?

20 A. No, and I didn't make the spritely ones I
21 might add. No substantive changes have been made
22 to that.

23 Q. With respect to your opinion that --
24 strike that.

25 On the issue of quitting, smoking

1 cessation, in your opinion does promotion,
2 cigarette promotion, have any effect on quitting?

3 A. The answer to that is also no, it does not
4 have any effect on the quitting behavior of
5 individuals.

6 Q. Is that the same basis for that particular
7 opinion or is there something additional?

8 A. No, the model on consumer decision-making
9 also would hold for promotions as well as
10 advertising, the role of promotions and the role of
11 advertising.

12 Q. So I understand, it's that it's such a
13 small piece of the pie it can't direct the
14 behavior; is that your view?

15 A. No, I'm sorry. The view is that because
16 it is directed toward brand choice and brand
17 decisions, and in fact, the word promotion is in
18 the circle called market or controlled stimuli on
19 the right-hand side, its role is to influence
20 consumer decisions with regard to brand choice, so
21 the decision with regard to quitting or starting is
22 not included in that.

23 Q. If I'm a construction worker and I'm at a
24 construction site and I'm trying to quit smoking
25 and a young lady comes out passing out Winston

1 hardhats and Winston cigarettes, could that not
2 have an adverse effect and tempt me and maybe even
3 cause me to go ahead and have some more Winstons?

4 MR. BURTON: Object to the form.

5 MR. GLASS: Object to the form.

6 THE WITNESS: Well, any individual is going to
7 accommodate information as the smoking process as
8 this multifactorial model suggests. That promotion
9 would be taken in as part of all the other
10 influences in that individual's environment, but
11 that's going to be primarily a brand choice effect
12 rather than a quitting or not quitting effect.

13 BY MS. FLOWERS:

14 Q. Have you looked at the industry's
15 practices with regard to sampling cigarettes?

16 A. I've seen various discussions of sampling
17 related to the cigarette industry, yes.

18 Q. What is your understanding of who they
19 will give free cigarettes to?

20 A. My understanding is that --

21 MR. BURTON: You're talking about today, Jodi?

22 MS. FLOWERS: Yes, let's take today.

23 THE WITNESS: The process is that free
24 cigarettes are to be distributed to smokers of
25 legal age.

1 BY MS. FLOWERS:

2 Q. That they are not to be distributed to
3 non-smokers of legal age?

4 A. Correct.

5 Q. Do you have an understanding of the
6 sampling practices of let's say 1980?

7 A. No, I do not. I have not seen a
8 discussion of what the practices were in 1980.

9 Q. Same question for 1960.

10 A. No, I don't have that awareness.

11 Q. Will you agree with me that giving away
12 free cigarettes could have the effect of
13 encouraging people to continue to smoke?

14 A. No, I think a person is going to make the
15 decision about smoking -- a person is going to make
16 a decision about continuing to smoke based on a
17 variety of considerations. Whether a pack or small
18 sample pack of free cigarettes is available would
19 not impact that decision.

20 Q. When you smoked did you ever have
21 cravings?

22 A. Oh, yes, I think I could say that there
23 were cravings, right.

24 Q. Were there any certain social situations
25 or cues that sometimes led you to want a cigarette

1 more?

2 A. It's interesting you should use the word
3 cue because I used to shoot a lot of pool and if I
4 had a cue stick in my hand I had a cigarette in my
5 mouth, so that was definitely one cue, but I was
6 very typical. I smoked more after eating, I smoked
7 more when I drank, I smoked more when I was in
8 social settings, I smoked more when I shot pool.
9 Those are my profiles.

10 Q. That sounds pretty standard. Have you
11 done any research or seen any research on that,
12 those particular social cues that you just
13 mentioned?

14 A. Those are anecdotal. Depositions will
15 typically replay a smoker's profile. It's not
16 unlike that.

17 Q. I think you testified earlier that you
18 were familiar with the Winston campaign in the
19 70s. Can you tell me what you remember about the
20 ads that you saw or the promotional activities that
21 you saw with respect to that particular campaign?

22 A. There was one campaign for Winston which
23 showed typically outdoor scenes of lumberjacks,
24 architects, construction sites, those kinds of
25 scenes, occasionally with a person with a hardhat

1 on, people holding drawings that looked like
2 architectural drawings or construction plan
3 drawings. Those are the things that I remember
4 about that campaign.

5 Q. Professor, have you ever done any research
6 on how consumers view the source credibility of the
7 Government?

8 A. Personally, no. I was trying to think,
9 the Federal Trade Commission corrective advertising
10 issue I was investigating -- the reason I was
11 hesitating for a moment was I was trying to
12 remember whether that piece of research revealed
13 that it was a Federal Trade Commission program to
14 my respondents but it did not, so no, my own
15 individual research has not investigated the
16 credibility of the Government as an information
17 source.

18 Q. As an expert in consumer behavior -- is
19 that a fair characterization, or expert in
20 marketing?

21 A. I'd like to think so, yes.

22 Q. As an expert in marketing, would it
23 surprise you if consumers did not view the
24 Government as a terribly credible source?

25 MR. GLASS: Objection to form.

1 THE WITNESS: I find that various polls will
2 list professions and organizations and their
3 credibility, believability, likability. I think
4 the tendency is for consumers to be suspicious and
5 highly skeptical of all sources of information.
6 No, it wouldn't surprise me if the Government did
7 not score high in a poll like that.

8 BY MS. FLOWERS:

9 Q. If I could direct you back to Semenik 3,
10 the reliance list, this morning you testified about
11 consumer awareness of smoking and health risks. Do
12 you recall that testimony?

13 A. Yes, I do.

14 Q. And if you need time to answer this
15 question you can take a break, but I'm trying to
16 determine which of the initial reliance materials
17 you feel are supportive of that position. I've
18 gone through it and there are a number of polls
19 from various organizations that are listed.

20 A. Yes.

21 Q. And I've identified those. But where I've
22 got the question is if beyond the polls there is
23 additional reliance material in here that you feel
24 is supportive of that particular opinion.

25 A. Well, I am going to need to take a look at

1 this because beyond the polls -- and hopefully
2 you'd identified No. 22, Student Ceiling between
3 Smoking and Cancer, Student Scholastic, 1960, that
4 is a poll or survey.

5 Q. And No. 2 and 3 or the prior page, the
6 Gallup polls?

7 A. Gallup polls --

8 MR. GLASS: Are you asking him to the best of
9 his knowledge just by viewing the titles, right?
10 In other words, you don't want him to start looking
11 through the actual materials as we sit here?

12 MS. FLOWERS: Not unless he needs to do that.
13 Let me try the more general question.

14 BY MS. FLOWERS:

15 Q. Do you have a sense of the categories of
16 information that you base your opinion on that
17 consumers were well-informed?

18 A. There are the polls, for example, No. 12,
19 Smoking Prevalence, Beliefs and Activities, Gallup
20 organization, May, 1993. That's another one. It
21 is polls, it is also journal articles, for example,
22 No. 26, Brand Logo Recognition by Children Three to
23 Six Years Old in JAMA, but then the follow-up study
24 to that, No. 29, Young Children's Perceptions of
25 Cigarette Brand Advertising Symbols of Awareness,

1 Affect, that article very clearly indicates that
2 children aged three to six years old also have a
3 high degree of awareness of --

4 Q. I'm going to stop you for just a moment
5 because Counsel entered an objection in the record
6 earlier about kids and maybe we can come to some
7 agreement, I would hope so, in an effort to focus
8 this case that three- to six-year-old kids probably
9 aren't in the case anymore. We can hopefully agree
10 on that. Maybe you want to think about it. Let's
11 take 16 and up.

12 A. Like Nos. 43 and 44, I can't remember
13 whether those two have but they potentially have
14 that.

15 This would be a time for me to clarify one
16 thing. We had a discussion this morning in this
17 topical area about asbestos workers' awareness and
18 how I would justify that. One of the things I was
19 thinking about over lunch is in the 1989 Surgeon
20 General's report there is a discussion of the
21 general public's awareness of the link between
22 smoking and asbestos, and that was a study -- it
23 was either Roper or Gallup or one of the major
24 organizations has a study cited in the 1989 Surgeon
25 General's report about average consumers, and

1 average consumers had an awareness rate of that
2 issue somewhere in the 70 percent, 74 percent
3 range.

4 So part of my answer was -- while I didn't
5 state my reliance on that Surgeon General's report,
6 it is discussed in there. So my anticipation would
7 be that asbestos workers would have a higher rate
8 than that given the average consumer's rate. I
9 said that at the time but I forgot to bring up that
10 survey.

11 If you want to take a break while I go
12 through this because this is probably going to take
13 me 10 or 15 minutes and then I'll mark these off.

14 (A short break was taken.)

15 BY MS. FLOWERS:

16 Q. Doctor, have you had a chance to review
17 your reliance list?

18 A. Now I've gone through the reliance list
19 and what I've done is I've checked the ones I
20 believe have reference to levels of consumer
21 awareness. Now, I've erred on the side of being
22 liberal and checked some articles where my
23 recollection is there is a statement but there may
24 not be, so in the interest of completeness if I
25 could read those numbers to you.

1 Q. I'll tell you what: Is that the copy
2 that's already in the record?

3 A. Yes.

4 Q. Fine, you won't have to go through that.
5 I appreciate you doing that. If I could just look
6 at it briefly, thank you.

7 MR. BURTON: Just for purposes of the record he
8 put a check next to the ones?

9 MS. FLOWERS: Yes.

10 MR. BURTON: Has he put a check next to the
11 ones that you've highlighted, Jodi?

12 MS. FLOWERS: It appears that he did. He did
13 not look at the ones I highlighted.

14 MR. BURTON: I just want to make sure whatever
15 is in the record reflects that when he did it he
16 didn't assume that --

17 MS. FLOWERS: He didn't take my highlighting.

18 BY MS. FLOWERS:

19 Q. Earlier in the morning I asked you whose
20 expert reports from this case you had reviewed. Do
21 you recall that line of questioning?

22 A. I do.

23 Q. And we both had trouble remembering who
24 the experts were in this case, so I'd like to read
25 you the names of some people and see if you

1 reviewed any materials from them. Neil Beniewicz?

2 A. Yes.

3 Q. Tell me what you've reviewed of
4 Dr. Beniewicz'.

5 A. I recall reviewing the expert statement,
6 and I don't recall whether there were attached
7 reliance or supportive materials or not.

8 Q. Do you recall what sort of response you
9 had from reviewing that particular report?

10 MR. GLASS: Objection to form.

11 BY MS. FLOWERS:

12 Q. Did you agree with anything Dr. Beniewicz
13 opined on?

14 A. Well, the main conclusions I did not agree
15 with, let me put it that way.

16 Q. How about Dr. David Burns?

17 A. I don't recall reviewing that expert
18 report.

19 Q. Thomas Florence?

20 A. No, I don't recall that report.

21 Q. Alan Smith?

22 A. No.

23 Q. Carl Kelsey?

24 A. No.

25 Q. Albert Miller?

1 A. No.

2 Q. Fran Rabinowitz?

3 A. No.

4 Q. Did any other expert reports come to your
5 mind perhaps over lunch?

6 A. Well, Cummings, is there an Engleman or --

7 Q. Engleman?

8 A. Engleman, right, that's another report I
9 reviewed.

10 Q. What did you think of that one?

11 A. Well, typically we don't have a lot in
12 common, so the conclusions are never conclusions I
13 agree with, although we may have looked at some of
14 the same literature.

15 Q. With respect to the report of
16 Dr. Cummings, do you recall when -- I think you
17 testified you had reviewed both his first report
18 and his second report. When did you have the
19 opportunity to review those?

20 A. The first report I received sometime
21 during the summer, and forgive me for not being
22 more specific than that, 1999. The revised report
23 was just recently in the last month or supplemental
24 or whatever it's titled.

25 Q. For any of those witnesses, I think we

1 said Cummings, Harris, Hanson and Eagleman, did you
2 prepare any analysis of those reports?

3 A. No, I have not prepared a written
4 analysis.

5 Q. In your expert report and on your reliance
6 materials and I believe in your testimony this
7 morning you told us that you find the FTC to be an
8 authoritative source of information on cigarette
9 advertising. Do you recall that testimony?

10 MR. BURTON: Object to form.

11 THE WITNESS: The source is generally credible
12 and authoritative. As I also stated this morning,
13 I review every report that comes from an
14 organization to evaluate the way in which the
15 report was created, what data it relied on, what
16 kinds of conclusions were drawn, and though I may
17 find a source generally credible I may dispute some
18 findings from a source.

19 BY MS. FLOWERS:

20 Q. Fair enough. Have you undertaken any
21 review of how many times the FTC has issued
22 complaints against the cigarette industry for false
23 or misleading advertising?

24 A. No, I do not track the FTC's allegations
25 with respect to false or misleading advertising

1 across any industry, although they are active in
2 many industries.

3 Q. Do you have any idea how many times they
4 have issued cease and desist orders with respect to
5 false and misleading advertising by the cigarette
6 industry?

7 A. No.

8 Q. Are you aware that there have been
9 Congressional hearings on the issue of false and
10 misleading advertising?

11 A. There have been Congressional hearings on
12 that issue regularly.

13 Q. Do you recall the 1957 hearings, for
14 example?

15 A. No, I do not.

16 MR. GLASS: Are you talking about hearings in
17 connection with cigarette advertising or
18 advertising in general?

19 BY MS. FLOWERS:

20 Q. This is on cigarette advertising.

21 A. That was my assumption.

22 Q. In formulating your opinion that ads from
23 the 40s and 50s did not undermine health
24 information, would it be important to you to know
25 whether the advertising itself was deemed false and

1 misleading by the people who were looking at it at
2 the time?

3 MR. BURTON: Object to the form.

4 THE WITNESS: Well, if you're referring to the
5 Federal Trade Commission again, is that correct?

6 BY MS. FLOWERS:

7 Q. Yes.

8 A. The Federal Trade Commission's job is to
9 inquire and set in motion its regulatory
10 procedures. If they come to a conclusion that an
11 ad has the potential to mislead, then in their
12 opinion they would like the ad changed. Typically
13 the Federal Trade Commission does not do research
14 within target segments to determine whether or not
15 it has, in fact, misled. I believe the language is
16 has the potential to mislead. So that would be
17 part of their standard procedure.

18 Q. What language is that you're referring to,
19 sir?

20 A. That would be the language of a cease and
21 desist order, for example.

22 Q. But, in fact, there have been times when
23 the FTC has found that cigarette advertising is
24 false and misleading; do you agree with that?

25 A. When there was the issue of whether or not

1 tar and nicotine levels and advertising in that
2 regard was false or misleading, the Federal Trade
3 Commission did, in fact, step forward, but to my
4 knowledge the Federal Trade Commission has never
5 moved to its most rigorous mandate, which is a call
6 for corrective advertising, which it has used in
7 other industries because of false or misleading
8 advertising.

9 Q. And what do you base that statement on?

10 A. Because I know the times when corrective
11 advertising has been mandated and it's only been
12 three or four times and it was never with the
13 cigarette industry.

14 Q. In what instances did that occur?

15 A. In two cases. One was Listerine and its
16 claim that Listerine can cure and prevent colds,
17 and the other case was with Campbell's Soup when
18 Campbell's Soup had presented a portrayal of the
19 product in a way that the Federal Trade Commission
20 deemed misleading.

21 Q. Do you know the first time that a cease
22 and desist order came from the FTC with respect to
23 cigarette advertising?

24 A. No, I'm not aware of that specific date.

25 Q. Do you know the most recent date that a

1 cease and desist order came from the FTC with
2 respect to cigarette advertising?

3 A. No, I do not.

4 Q. Was that a conscious decision on your part
5 not to review that particular body of information?

6 A. No, that was not a conscious decision, it
7 was just not something that I did in the course of
8 my research.

9 Q. Do you think it has bearing on the
10 opinions that you hold?

11 A. No, it would not.

12 Q. If the agency that oversees the
13 advertising is making findings or allegations that
14 the advertising is false and misleading, wouldn't
15 that be directly relevant to the opinions you had
16 to offer with respect to the historical cigarette
17 advertising?

18 A. Well, if a brand is challenged on its
19 claims then that individual brand would be
20 punished -- we're still in a situation where there
21 is a brand advertising issue and consumers are
22 making brand choices, so with respect to the issue
23 of whether smoking -- whether advertising
24 influences people's decision to begin smoking,
25 continue smoking or quitting smoking, that brand

1 advertising problem would not be relevant to that.

2 Q. What if the conclusions were broader than
3 brand specific as with the 1957 conclusions about
4 filter advertising by everyone in the industry?

5 MR. BURTON: Object to the form.

6 THE WITNESS: Well, the point is that people
7 are making decisions to smoke, to continue smoking
8 or to not quit smoking on issues or on factors
9 other than advertising, so in that sense the
10 advertising is not relevant to those decisions.

11 BY MS. FLOWERS:

12 Q. So whether it's misleading or not is not
13 relevant then, either?

14 A. The Federal Trade Commission is charged
15 with the responsibility for maintaining fair
16 competition within industries, which means that
17 misleading advertising is deemed to be unfairly
18 competitive. So with respect to a decision on
19 whether or not to use a product category, it would
20 not be relevant to that consumer decision.

21 Q. You testified in the Engle cases; is that
22 correct, sir?

23 A. That's correct.

24 Q. And this was in May of 1999?

25 A. Correct.

1 Q. Did you follow that particular case after
2 you finished testifying?

3 MR. GLASS: Objection to form.

4 THE WITNESS: Only what was published in
5 Popular Press, Wall Street Journal, USA Today.

6 BY MS. FLOWERS:

7 Q. You didn't go back down to Miami and watch
8 any of the proceedings?

9 A. No, I did not.

10 Q. Did you read any of the testimony?

11 A. No, I did not.

12 Q. Were you aware that in the punitive
13 damages phase that the cigarette industry
14 apologized to the jury for misleading the public?

15 MR. BURTON: Object to the form.

16 MR. GLASS: Object to the form.

17 THE WITNESS: That was not one of the news
18 reports I recall reading.

19 BY MS. FLOWERS:

20 Q. Would that have been of interest to you?

21 MR. BURTON: Same objection.

22 THE WITNESS: I would have found it interesting
23 to find out what they were apologizing for, yes,
24 and what they felt -- what their expression of
25 misleading was.

1 BY MS. FLOWERS:

2 Q. Is it safe to assume that if an industry
3 is apologizing publicly for their misconduct with
4 respect to misleading cigarette advertising that
5 perhaps there was, in fact, a misleading
6 advertisement going on?

7 MR. BURTON: Object to the form.

8 MR. GLASS: Object to the form.

9 THE WITNESS: I'll answer that but I don't
10 understand what this has to do with the Falise
11 case, and maybe if we could tie that together I'd
12 be more informative in my answers.

13 BY MS. FLOWERS:

14 Q. You offer opinions on honest and ethical
15 advertising; is that true?

16 A. I don't think I offer opinions on that. I
17 teach that in my classes.

18 Q. Do you hold opinions on what honest and
19 ethical advertising is?

20 A. Yes, and again, you can tell me how this
21 is relating to targeting segmentation, the central
22 issues of the Falise case.

23 Q. Sir, you have a whole entire section of
24 your report about how cigarette advertising never
25 undermined any health information.

1 A. Now, you're categorizing that in the
2 ethics area.

3 Q. I don't know how I'm categorizing it, but
4 I'm trying to inquire about your opinions with
5 respect to misleading advertisement and whether it
6 would make any difference to you if the industry
7 confessed to that.

8 A. And misleading advertising is one of the
9 issues in the Falise case?

10 Q. With respect to your opinion on page 12,
11 the images and cigarette advertising do not
12 undermine health warnings or information, am I
13 misreading this section?

14 A. No. The section reads images and
15 cigarette advertising do not undermine health
16 warnings or information, and that is my opinion
17 with respect to my expert report in the Falise
18 case, yes.

19 Q. And you've reviewed Dr. Harris' report?

20 A. Yes.

21 Q. And you might recall from that report that
22 information issues, if we can call them that, are
23 relevant to this case?

24 A. Yes, and I think that would be consistent
25 with my section 6 on page 12, as well.

1 Q. And you've testified previously on these
2 types of issues?

3 A. Health warnings or information, yes.

4 Q. And I believe you've also testified in the
5 past that the cigarette industry uses multiple
6 channels of communication. Do you recall that
7 testimony in the Texas case?

8 A. I don't recall it specifically in the
9 Texas case but I can offer an opinion on that, yes.

10 Q. In your view does the tobacco industry use
11 multiple channels of communication?

12 A. Yes, just like every other industry.
13 Multiple channels of communication increases the
14 probability of reaching your market segment with
15 the information you want to reach them with.

16 Q. And you've also testified previously in
17 Texas that there has been conflicting information
18 out there in the marketplace of information --

19 MR. BURTON: Object to the form.

20 MS. FLOWERS: Could you read that back to me,
21 please?

22 (Record read as requested.)

23 BY MS. FLOWERS:

24 Q. Do you recall testifying that there has
25 been conflicting information available to the

1 public?

2 MR. BURTON: Same objection.

3 THE WITNESS: Yes, in the sense that newspaper
4 reports would offer opinions by medical doctors and
5 citing medical research that showed that at
6 different periods of time there was controversy and
7 debate and conflicting studies with regard to the
8 health effects of smoking.

9 BY MS. FLOWERS:

10 Q. And if this conflicting information was
11 systematic and continuous over the years, isn't it
12 possible that some consumers chose to believe one
13 side or the other of the conflicting information?

14 MR. BURTON: Object to the form.

15 MR. GLASS: Object to the form.

16 THE WITNESS: Well, I did a research study,
17 actually I did a comprehensive evaluation of
18 newspapers, and there was nothing that could be
19 categorized as consistent and systematic. The
20 controversies came and went, the reports came from
21 credible sources, individuals would read those and
22 determine what they believed and what they didn't
23 believe, so that's the way the media works and
24 that's also reflected on my consumer
25 decision-making model.

1 BY MS. FLOWERS:

2 Q. In reviewing the Gallup polls did you see
3 any of the questions that asked -- I believe the
4 question was phrased what would it take to convince
5 you that cigarette smoking causes lung cancer and
6 one of the answers given was an admission by the
7 manufacturer. Do you recall that particular line
8 of research?

9 MR. BURTON: Object to the form.

10 MR. GLASS: Object to the form.

11 THE WITNESS: I do recall that question being
12 asked. I don't recall at the moment what the
13 answer was or the portion of consumers that agreed
14 or strongly agreed with that question.

15 BY MS. FLOWERS:

16 Q. Can we agree that at least for some people
17 it might have been important if the manufacturer
18 had admitted that?

19 A. I think we can agree for some people that
20 might have been another piece of information they
21 would have added to all the information they had
22 about the issue, yes.

23 Q. You stated you did a systematic review of
24 newspaper reports. Can you describe that for me,
25 please?

1 A. Well, at one point I wanted to get a
2 feeling for how many articles there were in
3 newspapers regarding the health risks of smoking
4 versus how many articles there were with respect to
5 raising a controversy about that, so for newspapers
6 and through the 50s and 60s when there was
7 scientific debate, that was the time period during
8 which I went through the articles.

9 Q. What was the time period?

10 A. 1950s and 1960s newspaper reports.

11 Q. And where did you do this particular work?

12 A. I did that work both in the Library of
13 Congress and I did request during other cases that
14 newspapers be all -- I specified that all articles
15 related to tobacco, smoking, research on smoking be
16 photocopied and sent to me, so I have boxes and
17 boxes of newspapers.

18 Q. You made that request of whom, sir?

19 A. I made that request through the Johnson,
20 Tyler & Purvis law firm.

21 Q. So the material you received was
22 excerpted?

23 A. Well, researchers would go through
24 microfiche and following my instructions photocopy
25 any article that had to do with smoking, cancer,

1 research on smoking and then sent that compilation
2 to me.

3 Q. Would you receive the entire newspaper or
4 would you receive the article?

5 A. I specified that certain articles be
6 photocopied based on those criteria, and I did go
7 back to the Library of Congress and verify for
8 certain issues that, in fact, every article that
9 met those criteria was actually photocopied.

10 Q. Did you take a look to see the extent of
11 cigarette advertising in any of those given
12 publications?

13 A. When I went through the microfiche I
14 looked for cigarette advertising.

15 Q. Did you copy those, as well?

16 A. I didn't copy those, no.

17 Q. Do you have a recollection about what the
18 extent of cigarette advertisement was?

19 A. There was probably one advertisement for
20 every 100 articles, some proportion like that.

21 Q. When you say one for every 100 articles,
22 are you speaking of articles, the ones that you had
23 clipped?

24 A. Right.

25 Q. So I want to be clear. For every 100

1 articles that you requested from Johnson Tyler that
2 you got back, there was approximately one -- there
3 was one cigarette ad in that scenario?

4 A. So I go to the Library of Congress, I
5 request a microfiche for the Detroit Free Press for
6 August of 1966. I spin through it all, I find
7 articles and I find cigarette ads, and for every
8 one cigarette ad there were 100 articles about
9 smoking, smoking cessation programs, risks of
10 smoking et cetera.

11 Now, for different years it would vary.
12 Some years there were hardly any articles, some
13 years there were dozens of articles. But the
14 proportion of advertising to articles about tobacco
15 and smoking was some huge percentage like 1 out of
16 10, 1 out of 100 depending on the year.

17 Q. And you specifically looked for the
18 cigarette ads?

19 A. When I did the spinning and verification I
20 was also looking for cigarette ads, yes.

21 Q. I did not note newspaper articles of that
22 type on your reliance list. Is that something you
23 intend to rely on for your opinions in the Falise
24 case?

25 A. There are a few listed but not the bulk of

1 all the ones I've been through. No. 71 is a
2 newspaper article.

3 Q. But this does not contain the boxes and
4 boxes you described?

5 A. No, it does not, but since we got into
6 this line of discussion, that is an area where I
7 would have located publicly available information
8 about smoking and health.

9 Q. Is that material that has ever been on
10 your reliance list and perhaps taken off for this
11 case or has it not made its way onto the list?

12 A. I don't think I ever put it on the
13 reliance list. I did not specifically request that
14 they be taken off, I know that.

15 Q. So there have not been instances where you
16 used them and did not use them for this case?

17 A. Well, let me try to think. I believe in
18 some of the Attorney General cases, which were
19 state specific, that in those cases I did have all
20 the newspapers from across the state, but in a case
21 like this, no, I did not have that information on
22 my reliance list.

23 Q. Do you have an understanding about whether
24 you will be testifying about that particular body
25 of work in the Falise trial?

1 A. If I'm asked questions about consumer
2 awareness then I will refer to the fact that over
3 several decades newspapers across the country have
4 been carrying stories about research related to the
5 risks, health risks, of smoking.

6 Q. Have you ever generated a list of the
7 articles you found?

8 A. No, I don't think a list was ever been
9 generated, no.

10 Q. You may have told me this, Professor, I
11 can't recall, forgive me. When did you do this
12 review, what date?

13 A. That kind of a review would have taken
14 place 96, 97, 98, sometime at the height of the
15 Attorney General's cases.

16 Q. Can you approximate for me the number of
17 articles in those boxes?

18 A. It was literally thousands because if you
19 can appreciate if it was Texas there was the Dallas
20 newspapers; if it was Washington it was all the
21 Washington state newspapers; New York, New York
22 state newspapers.

23 Q. But you didn't go to the different states
24 to get those articles, did you?

25 A. No, you can get those from the Library of

1 Congress.

2 Q. Have you conducted any similar sort of
3 review for the Falise case?

4 A. No, I have not.

5 MS. FLOWERS: I really don't want to read
6 10,000 articles but I'm going to have to request
7 copies of those. I realize you're going to want to
8 take it under advisement but if he's going to
9 testify about them I'd like to see them.

10 MS. TYLER: Can we go off the record for a
11 second?

12 (Discussion off the record.)

13 BY MS. FLOWERS:

14 Q. Dr. Semenik, those materials that we were
15 discussing, the newspaper articles, do they still
16 exist in your possession?

17 A. No, I do not have those in my possession
18 any longer. Those were for prior cases.

19 Q. Do you anticipate based on your prior
20 experience testifying in tobacco litigation that
21 you will be offering opinions based on those
22 materials?

23 A. Well, if I might refer to my model, which
24 shows factors that influence consumer
25 decision-making, there is in the lower left-hand

1 corner a box that says media and it says news and
2 reports. As a matter of general awareness it is
3 true that television programs, radio news reports
4 and newspaper reports discussed the health risks of
5 smoking when scientific studies were released such
6 as Surgeons General's reports, so to that extent
7 the model shows that things like media, newspapers,
8 radio, television, can have an effect on consumer
9 decision-making. Will I rely on any specific
10 newspaper article or television report, no.

11 Q. I notice on your chart, Professor, one of
12 the things -- no, I don't see it. Do you consider
13 direct mailings as one of the factors including
14 consumer decisions?

15 A. Yes, it would be included under either
16 advertising and promotion related to the marketer
17 controlled circle, marketer controlled stimuli
18 circle.

19 Q. I believe you testified earlier that in
20 your view public relations is subsumed within
21 marketing?

22 A. Let me be a little more elaborate about
23 that. In advertising, promotion and marketing
24 textbooks or seminars for professionals,
25 advertising and promotion and public relations will

1 be coordinated with each other in the process and
2 they are all considered to be the responsibility of
3 marketing.

4 Q. Have you undertaken any review of letters
5 sent from R.J. Reynolds Tobacco Company to members
6 of the public?

7 A. Individual letters from R.J. Reynolds
8 Tobacco to individuals in the public? Is that the
9 question?

10 Q. Yes.

11 A. No, I have not reviewed that.

12 Q. Where would you put letters from the PR
13 department of any given company on this chart, just
14 another offshoot here?

15 A. It would be under advertising or it could
16 be under promotion if it was discussing a contest
17 or a sweepstakes, so it would be under advertising
18 or promotion. A letter to consumers would be like
19 a mailing from Citibank offering you a new credit
20 card. That could come from the marketing
21 department, from the advertising agency..

22 Q. Setting aside just for a minute the kind
23 of thing you were describing, sending out
24 solicitations or coupons or giving something to
25 somebody on their mailing list, if we were

1 discussing a letter sent in response to a letter,
2 I'm a consumer, I've heard all this stuff in the
3 paper about smoking, I write R.J. Reynolds what's
4 going on here, and they write a letter back saying
5 we don't believe it was proven, here's our side of
6 the story, where would you put that on this model?

7 MR. BURTON: Object to the form.

8 THE WITNESS: That would all be part of
9 marketer controlled stimuli. If it's a statement
10 from a corporation to a customer then it's
11 controlled by a marketer so it would be somewhere
12 in that advertising promotion communication.

13 BY MS. FLOWERS:

14 Q. Would you be surprised to learn that there
15 were literally thousands of such letters spanning a
16 long time frame?

17 MR. BURTON: Object to the form.

18 MR. GLASS: Object to the form.

19 THE WITNESS: No, that would not surprise me.
20 Corporations typically respond to consumer
21 inquiries, sometimes by telephone calls, sometimes
22 by a letter response, so it wouldn't surprise me.

23 BY MS. FLOWERS:

24 Q. Would such a letter be part of the
25 conflicting information that a consumer could

1 receive about cigarettes and health?

2 MR. BURTON: Object to the form.

3 MR. GLASS: Object to the form.

4 THE WITNESS: Well, I'd have to review any
5 letter and determine whether it was in that period
6 of time or determine whether there's one set of
7 issues being discussed in way one with one
8 perspective and whether this letter had a different
9 perspective, so if I read the letters I might come
10 to that conclusion.

11 BY MS. FLOWERS:

12 Q. If there were tens of thousands of such
13 letters and they were consistent in their message
14 to the consumer, would that be a source of
15 information that might be of interest to you?

16 MR. GLASS: Object to the form.

17 MR. BURTON: Object to the form.

18 THE WITNESS: Now, is this 10,000 letters to
19 one consumer or 10,000 letters to 10,000
20 consumers?

21 BY MS. FLOWERS:

22 Q. 10,000 letters to 10,000 consumers.

23 MR. BURTON: Same objection.

24 THE WITNESS: I would suggest that that letter
25 had a statement to make and it was the same to each

1 consumer because it was a company's position on an
2 issue.

3 BY MS. FLOWERS:

4 Q. Have you reviewed any of the pamphlets or
5 handouts of the Tobacco Institute in the course of
6 your research?

7 A. No, I have not encountered pamphlets from
8 the Tobacco Institute.

9 Q. Have you reviewed statements by the
10 industry representatives on television programs
11 over the years?

12 A. Yes, I have.

13 Q. Will you tell me about that review,
14 please?

15 A. At one point I was able to locate
16 television news reports, some from the 50s, some
17 from the 60s, some as recently as the 90s, that
18 showed interviews with scientists and interviews
19 with individuals from the tobacco industry
20 discussing aspects of smoking and health, nicotine,
21 issues related to those kinds of discussions.

22 Q. Where the industry would stand up and give
23 its position on the subject?

24 A. Yes.

25 Q. Can you approximate how many such

1 appearances you reviewed?

2 A. Maybe eight or ten.

3 Q. Do you recall anything specific about
4 them?

5 MR. GLASS: Objection to form.

6 THE WITNESS: Nothing specific, only that in
7 the 1950s there were newscasts that had health
8 officials talking about findings with regard to
9 smoking behavior and other scientists talking about
10 the fact that they didn't agree with those
11 conclusions.

12 BY MS. FLOWERS:

13 Q. Similar to what was stated in the Frank
14 statement?

15 MR. BURTON: Object to the form.

16 MR. GLASS: Object to the form.

17 THE WITNESS: That's correct.

18 BY MS. FLOWERS:

19 Q. Would you agree that such statements by
20 the tobacco industry in television programs
21 contributed to the conflicting information
22 available to the consuming public?

23 MR. BURTON: Object to the form.

24 THE WITNESS: A variety of sources were
25 providing conflicting information. Officials from

1 the tobacco industry also had that opportunity to
2 make their statement. So consumers were offered
3 the opportunity to consider information from public
4 health officials, their own doctors, American
5 Cancer Society along with the information from the
6 cigarette industry.

7 BY MS. FLOWERS:

8 Q. Can you think of any piece of evidence or
9 group of evidence that would convince you that the
10 tobacco industry's representations had any effect
11 on consumers?

12 MR. GLASS: Object to the form.

13 THE WITNESS: Can you tell me what
14 representations you're talking about?

15 BY MS. FLOWERS:

16 Q. The denial that smoking causes disease or
17 that nicotine is addictive. Is there anything you
18 can envision, empirical evidence that would
19 convince you that that may have had an effect?

20 A. I've never said it didn't have an effect.
21 I think that consumers viewed that information,
22 incorporated in all the factors that influenced
23 their decision and then went ahead and made
24 decisions. Some people chose to quit smoking
25 because they knew that cigarettes had the potential

1 to damage their health and other people continued
2 to smoke because they accepted that risk.

3 Q. What if there was someone who really, just
4 a person who actually didn't believe there was any
5 risk. Do you think that that person would be any
6 different in the analysis?

7 MR. GLASS: Object to the form.

8 MR. BURTON: Object to the form.

9 THE WITNESS: If that person didn't believe
10 there was any risk then no matter what the
11 cigarette industry said or the community said, that
12 person would continue to make a decision based on
13 his or her beliefs.

14 BY MS. FLOWERS:

15 Q. What if they wrote to the company and got
16 something back in the mail that convinced them that
17 the tobacco companies they saw on television were
18 right, that the proof was not in yet?

19 MR. BURTON: Object to the form.

20 MR. GLASS: Object to the form.

21 THE WITNESS: Well, in this hypothetical
22 situation I can only say that individuals are able
23 to take information from many sources and that they
24 incorporate all the information they receive as
25 part of a decision to whether to continue to smoke

1 or quit smoking.

2 BY MS. FLOWERS:

3 Q. As part of that process that they go
4 through do they engage in perhaps some
5 rationalization along the way?

6 MR. MUNSON: Object to the form.

7 THE WITNESS: That would be a psychological
8 process that is not part of my consumer
9 decision-making model here.

10 BY MS. FLOWERS:

11 Q. So you have no expertise in psychology?

12 A. Well, I have some expertise in psychology
13 but when you ask questions about rationalization,
14 et cetera -- are we saying that there was a
15 concerted effort sending letters to asbestos
16 workers? I'm just trying to get the context.

17 Q. Let's take the general public for right
18 now, smokers.

19 MR. BURTON: Is there a question pending?

20 MS. FLOWERS: There will be in a minute.

21 BY MS. FLOWERS:

22 Q. With respect to your knowledge about
23 psychology, does that fit anywhere in here or where
24 does that fit in the factors influencing consumer
25 decisions?

1 A. Consumer decisions are based on consumers'
2 information processing. Information processing is
3 a way in which consumers develop beliefs and
4 attitudes. Beliefs and attitudes are psychological
5 processes. If you're going to ask me about the
6 psychological process of rationalization, that's an
7 area of psychology I'm not familiar with.

8 Q. Are you familiar with the psychological
9 process of denial?

10 MR. GLASS: Objection to form.

11 THE WITNESS: No, that's a psychological
12 process that consumer behaviorists do not study.

13 BY MS. FLOWERS:

14 Q. Can you tell me what areas of
15 psychological processes that you do study?

16 MR. GLASS: Object. I think we're straying a
17 bit far afield.

18 MS. FLOWERS: He just told me that it factored
19 into this. I'm entitled to know what he's familiar
20 with.

21 MR. GLASS: What factored into what?

22 MS. FLOWERS: Psychological processes.

23 THE WITNESS: I think I was telling you that
24 there were psychological processes like denial and
25 rationalization that consumer behaviorists don't

1 study. I was saying that attitudes and beliefs are
2 things that consumer behaviorists do study, so that
3 would be my answer.

4 BY MS. FLOWERS:

5 Q. Did you take any psychology courses in
6 graduate or undergraduate school?

7 A. Yes, I did.

8 Q. Which ones did you take if you remember?

9 A. I took introduction to psychology,
10 theories of persuasion, a course on beliefs and
11 attitudes, a course on belief and attitude
12 modeling, and a three-course, nine-hour sequence in
13 experimental design, which was from the psychology
14 department.

15 Q. In the Engle case, Professor, you
16 testified that you had put in approximately 1,100
17 hours consulting or testifying for the tobacco
18 industry since 1991. You approximated that it was
19 a quarter of a million dollars in fees. Do you
20 recall that testimony?

21 A. Yes, I do.

22 Q. You also estimated that it was 10 to 15
23 percent of your income?

24 A. Correct.

25 Q. Thus at that point in May of 1999 it was

1 approximately \$2 and a half million income from
2 testifying on consulting for the tobacco industry?
3 Is my math wrong?

4 A. Yes. I have not made that much money.
5 It's somewhere in the range of \$400,000 to
6 \$500,000.

7 Q. Just making sure you're still awake.

8 A. Okay.

9 Q. Actually you testified that you earned
10 about a quarter of a million dollars; is that
11 right?

12 A. That's right.

13 Q. And then in the LaBelle case, the
14 individual smoker case in June of 2000 -- I'm
15 sorry, July of 2000, you testified you had earned
16 between \$450,000 and \$480,000 over the same time
17 period. Do you recall that testimony?

18 A. Yes.

19 Q. This was over the same time period
20 according your testimony? I'm just curious --

21 MR. BURTON: The dates you gave are a year
22 apart.

23 MS. FLOWERS: Right.

24 BY MS. FLOWERS:

25 Q. In 1999 you told the jury it was a quarter

1 of a million dollars, and then in 2000, a year and
2 two months later, you estimated it at \$450,000 to
3 \$480,000. I assume that's over the entire period
4 since 1991?

5 A. Right.

6 Q. I'm just curious why the dramatic increase
7 over the one-year period?

8 A. Well, I may have underestimated at the
9 time of Engle partly -- you have to remember that
10 the Engle trial took four years. I did have an
11 enormous amount of preparation during that time
12 period, and for these cases in the last year and a
13 half I've spent considerable time. My guess is
14 that I underestimated at the time of Engle but I
15 have put in a considerable amount of time including
16 and since the Engle trial.

17 Q. And those cases that you're currently
18 participating in are listed on the last page of
19 your report?

20 A. I believe they are.

21 Q. Correct?

22 A. Well, they list the ones I have
23 participated in.

24 Q. Are there any additional cases that you
25 currently --

1 A. Well, there is the Blue Cross Blue Shield
2 case, the LaBelle case, this case. I believe those
3 are the cases for now that I can recall.

4 Q. You're not involved in any of the class
5 actions for medical monitoring?

6 A. No.

7 Q. Professor, I saved the best question for
8 last. I noticed that you had an article on the
9 Flintstones on your reliance list.

10 A. Yes, I have.

11 Q. What opinions have you formulated
12 regarding the advertisements of Winstons and the
13 Flintstones cartoon?

14 A. The Flintstones cartoon program was
15 developed as an adult program scheduled during
16 adult prime time, scheduled other against other
17 adult programming so that article is included
18 because it shows that cartoon characters like the
19 Flintstones can be developed for adult audiences.
20 That's why it's on there.

21 Q. Other than that article did you look at
22 anything else with respect to the Flintstones,
23 either the cartoons themselves or any data about
24 who they reached?

25 A. Yes. The only thing I did study was where

1 it was scheduled and against which programming it
2 was scheduled, so it was scheduled in adult prime
3 time against adult programs.

4 MS. FLOWERS: Thank you, Doctor. I have
5 nothing further.

6 THE WITNESS: Thank you.

7 MR. GLASS: I'd like to take a very short break
8 and I'll have a few questions and then we can wrap
9 it up, okay?

10 (A short break was taken.)

11 EXAMINATION

12 BY MR. GLASS:

13 Q. Professor, welcome back. I've got a few
14 questions for you and we can I think wrap this up.
15 I want to take your focus back to some of the
16 issues that we had discussed earlier today before
17 the lunch break. Professor, in connection with
18 marketing and building market share, do
19 manufacturers like cigarette manufacturers, for
20 example, tailor their advertising and/or
21 promotional efforts to particular groups within the
22 market?

23 A. Yes, they do, and that process is referred
24 to as market segmentation. Where the broad
25 consumer market is broken into smaller submarkets,

1 those are called segments, and then within those
2 segments target markets are chosen, which are the
3 markets that a manufacturers believes they will
4 have the highest probability of success in selling
5 their brands to.

6 Q. And why do manufacturers choose to do this
7 market segmentation?

8 A. They do market segmentation because it is
9 literally impossible for one brand or even many
10 brands to be all things to all people, so as a way
11 to develop brands with specific features that are
12 more appealing to certain parts of the market,
13 segments are identified, research is done to
14 understand those segments and then brands are
15 developed for those segments.

16 Q. Now, you used the word target a moment ago
17 in your answer, and Ms. Flowers during the course
18 of her examination earlier also used the word
19 targeted. Could you explain to us what you mean by
20 the word target and what your definition of that
21 targeting is?

22 A. The definition of targeting, and it's my
23 definition but it's also a definition in the
24 marketing discipline, means that once market
25 segments in a broad market are identified then

1 certain targets within those segments are also
2 identified and the targets are the consumer groups
3 to whom a manufacturer believes they can have
4 brands developed and have success with those
5 brands.

6 Q. And is there anything nefarious or evil
7 about targeting?

8 A. No, there's nothing nefarious or evil about
9 targeting. It's standard procedure. In fact, some
10 of my reliance material shows that J.C. Penney,
11 Sears, American Express target different parts of
12 the population, and I might also add that for any
13 one brand, a brand might have several target
14 markets because it appeals to a broad cross-section
15 of consumers.

16 Q. And how about market segmentation in
17 general? Is there anything nefarious, evil or
18 deceptive about that practice?

19 A. No, there is not. It is standard
20 practice. In fact, sometimes leaders in different
21 communities will want manufacturers to segment or
22 target them because it provides products that are
23 closer to products they find satisfying.

24 Q. And have you found in your research that a
25 group that is being targeted resents the fact that

1 it's been targeted?

2 A. No. In fact, as I was just saying, target
3 markets and segments tend to end up with brands
4 that are closer to their desires because a
5 manufacturer has taken the time to understand and
6 identify what they need and what they would like.

7 Q. Now, there was some discussion this
8 morning about the tobacco companies targeting blue
9 collar workers. First off, let me ask you, have
10 you seen evidence of that?

11 A. Well, I have not seen evidence that -- let
12 me put it this way: Blue collar is a broad band in
13 society that includes a lot of different
14 professions, occupations and is really a
15 socioeconomic description. Now, within that
16 socioeconomic description there are certain brands
17 which will appeal to blue collar workers, but those
18 are brands that tend to have a broad appeal across
19 many different groups like Tide laundry detergent,
20 Crest shampoo, Black & Decker tools, Eveready
21 batteries. So the issue with blue collar is that
22 it's a socioeconomic classification and is a large
23 and attractive segment for manufacturers because
24 they use a lot of products and they have money to
25 spend on products.

1 Q. Now, you mentioned earlier as I recall a
2 Winston campaign that you said had portrayed
3 certain images that would appeal to blue collar
4 workers. Is that an example of a brand that has
5 marketed predominantly to blue collar workers or is
6 that an example of a brand that had marketed to
7 large segments of the population, blue collar
8 workers being one of those segments?

9 A. In my opinion it's a brand with broad
10 appeal that is marketed to blue collar workers as
11 well as many other segments. For example, we
12 wouldn't say that Marlboro is marketed to cowboys.
13 You know, there's an image being used of a cowboy
14 which has broad appeal against many classes of
15 consumers.

16 Q. And can you think of an example of a brand
17 that is marketed predominantly to one segment?

18 A. Well, as I said this morning, the only
19 time I've seen -- excuse me, by segment do you mean
20 occupation?

21 Q. No, I mean, in other words, can you think
22 of -- let me put it another way. Is there an
23 example of a cigarette brand that has been marketed
24 to one segment of the population?

25 A. Thank you for clarification. I think a

1 good example in that regard would be Virginia
2 Slims. That's a brand that was developed for and
3 marketed to women, although, again, women would cut
4 across many different social classes, socioeconomic
5 classes and occupational classes.

6 Q. And as a parallel has there been a brand
7 that has been predominantly marketed toward blue
8 collar workers?

9 A. I've never seen evidence of a brand
10 marketed to blue collar workers specifically. I've
11 seen ad campaigns for a brand with broad market
12 appeal where that campaign may appeal to blue
13 collar workers but never a brand specifically
14 marketed to blue collar workers.

15 Q. And getting back to your Virginia Slims
16 example, are women, the target group of that brand,
17 any more susceptible to advertising than any other
18 demographic group?

19 A. No. In my opinion, no, women are able to
20 accept advertising for what it is, a company's
21 attempt to persuade them to choose one brand over
22 another, but Americans categorically are tough
23 customers who know that marketers are trying to
24 develop brands that appeal to them more than a
25 competitor's brand.

1 Q. And can you think of an example of a brand
2 that may have appeal or that is targeting the high
3 socioeconomic sector?

4 A. The ads for cigarettes, brands I've seen,
5 there were a couple. Benson & Hedges typically is
6 targeted to a higher end consumer with ads in
7 upscale magazines. Another brand, Rothschild,
8 attempted to do that, as well.

9 Q. Now, let me focus you a little bit now,
10 Professor, to asbestos workers. Have you seen any
11 evidence in your research that the tobacco
12 companies have targeted asbestos workers with their
13 marketing practices?

14 A. No. In fact, as I said this morning, when
15 I was encountered with that proposition in the
16 complaint I went to what I presumed would be the
17 ideal place to target an occupation, the asbestos
18 workers, by looking at Asbestos Worker Magazine,
19 and as I said earlier, not only were there no
20 cigarette ads, there were no ads but rather public
21 service announcements highlighting the risks of
22 smoking and exposure to asbestos.

23 Q. Let me back up half a step. Do you have
24 any reason to believe that blue collar workers are
25 any more susceptible to advertising than the

1 general population?

2 A. No. I think that blue collar workers,
3 again, have had vast experience with the way the
4 marketing system works, process a lot of
5 advertising, process a lot of promotions, and in
6 fact, the friends I have who are blue collar who
7 would fit into that category of blue collar, tend
8 to be very careful with their money and their
9 budgets and review brands quite carefully.

10 Q. And the same question with respect to
11 asbestos workers. Are they any more susceptible or
12 vulnerable to advertising than the general
13 population?

14 A. There's nothing about their occupational
15 category that would make them any more susceptible
16 or in any way vulnerable to advertising.

17 Q. And the articles that you mentioned --
18 excuse me, not articles but the public service
19 announcements that you had seen in the Asbestos
20 Workers Magazine, what is the relative impact of
21 those types of announcements in that magazine
22 compared to one who had advertisements
23 generally?

24 A. Well, it's my opinion that because those
25 announcements and articles appeared in the asbestos

1 workers' own magazine sponsored by its own union
2 and trade association, that those would be highly
3 credible impactful communications relative to what
4 would be self-serving advertising, which is the way
5 consumers look at ads from companies.

6 Q. And that concept is known as source
7 credibility?

8 A. Yes. The articles and the vehicle in
9 which they appeared, Asbestos Worker, would be a
10 highly credible source relative to a self-serving
11 source like a company promoting its own brand.

12 MR. GLASS: I have nothing further. Thank you,
13 Professor. Any of the other lawyers have any
14 questions?

15 MR. BURTON: I have none.

16 MR. MUNSON: No.

17 FURTHER EXAMINATION

18 BY MS. FLOWERS:

19 Q. Professor Semenik, with respect to the
20 question you were just asked or the series of
21 questions on Asbestos Worker Magazine and the
22 relative impact of those announcements, is there
23 anything besides your own Ph.D. and your general
24 expertise that you rely on in making that
25 statement?

1 A. Well, I believe that since the general
2 public during that period of time, during the
3 period of time 1980, had a 74 or 70 percent
4 awareness of a particular risk between cigarette
5 smoking and asbestos exposure, then given the
6 asbestos workers' own industry trying to highlight
7 that issue with them, I would expect that their
8 awareness level would be even higher than that.

9 Q. You would expect that it would be. Do you
10 have any empirical data to show that it is?

11 A. No, but it would be hard to believe that
12 the general public with no particular interest or
13 exposure to asbestos was 74 percent aware, then I
14 would be shocked to find that workers in that
15 industry had an even lower awareness than that.

16 Q. You testified earlier that that was the
17 1989 report and I think you just said that you
18 referred those figures to 1980.

19 A. Well, it was in the 1989 Surgeon General's
20 report there is either a Roper or Gallup's study
21 from 1980 that's cited, so that's why there are two
22 dates.

23 Q. And when I questioned you earlier on other
24 polls around that same time period you didn't
25 recall any or you hadn't seen any.

1 A. Well, you asked me if I saw any polls of
2 asbestos workers and I said no, I had not.

3 Q. So the support for that contention is a
4 poll of smokers?

5 A. No, a poll of the general public.

6 Q. On what particular issue, sir?

7 A. On whether or not there is a heightened
8 risk of health hazard between smoking and also
9 exposure to asbestos.

10 Q. Do you have any idea what the budgets of
11 the Asbestos Worker Magazine were?

12 A. No.

13 Q. Do you have any reason to believe they
14 would be in the range of billions of dollars?

15 A. I believe they would have no reason to
16 believe in the range of billions of dollars.

17 Q. In response to Counsel's questions you
18 also testified on the issue of susceptibility. Do
19 you recall that testimony?

20 A. Yes, I do.

21 Q. What do you base your answers on with
22 respect to those particular questions and your
23 conclusions that certain segments aren't any more
24 susceptible than anyone else?

25 A. Well, consumers in America have

1 demonstrated tremendous ability to process
2 advertising, evaluate advertising, make brand
3 choices, brands which do not satisfy consumers'
4 desires leave the market, brands that are
5 successful have the ability to develop features
6 which are satisfying to the market. I have no
7 reason to believe that asbestos workers are not
8 intelligent people who are able to do the same
9 thing as other consumers.

10 Q. Do you have any information about the
11 education levels of asbestos workers?

12 A. Asbestos workers being in the blue collar
13 category typically have high school educations.

14 Q. Do you have any other empirical data that
15 you use as a basis for your opinions on who's
16 susceptible and who's not?

17 A. No.

18 Q. I think you also testified that you saw
19 nothing nefarious or evil about blue collar
20 targeting; is that a fair statement?

21 MR. BURTON: Object to the form.

22 THE WITNESS: My statement was that
23 segmentation and targeting are standard business
24 practices with no evil intent, in fact, just the
25 opposite. The intent is to develop brands and

1 products which more closely match individuals'
2 desires.

3 BY MS. FLOWERS:

4 Q. Would your conclusions or analysis change
5 at all if the product kills people?

6 A. Well, for example, skateboards or
7 airplanes are products that kill people, so I don't
8 think that products are targeted for people in an
9 attempt to kill them, no.

10 Q. Well, will you agree with me that
11 skateboards and airplanes when they kill people
12 it's an accident, whereas with cigarettes it's just
13 using them for what they've been designed to do,
14 which is to smoke them?

15 MR. BURTON: Objection.

16 THE WITNESS: I will also state that people are
17 familiar with associated risks for a broad range of
18 products and that use of the product represents a
19 known and significant risk and we all make choices
20 to use those products.

21 BY MS. FLOWERS:

22 Q. So your opinion that there's nothing
23 nefarious or evil about targeting cigarettes at blue
24 collar workers would remain the same irrespective
25 of the characteristics of that product?

1 A. That's correct, when consumers are aware
2 of the risk of that product.

3 MS. FLOWERS: I have nothing further.

4 MR. GLASS: Forgive me, Professor, one more
5 question I neglected to ask you earlier.

6 FURTHER EXAMINATION

7 BY MR. GLASS:

8 Q. Directing your attention to Semenik
9 Exhibit 6, which is an excerpt from the 1989 Surgeon
10 General's report?

11 A. Correct.

12 Q. In the middle of the page --

13 MS. FLOWERS: Which page?

14 BY MR. GLASS:

15 Q. The first page of the excerpt under the
16 heading blue collar workers --

17 MS. FLOWERS: The new page 3?

18 MR. GLASS: I'm sorry, Roman numeral page 7,
19 page 3 of the excerpt, thank you.

20 BY MR. GLASS:

21 Q. You were asked earlier by Ms. Flowers
22 whether or not you agree with this statement.
23 "Again, blue collar workers are a major target of
24 cigarette company advertising and promotional
25 campaigns," and I believe your testimony was that

1 you did agree with that, correct?

2 A. That's correct.

3 Q. And I'd like you to focus for a second on
4 the word major. Is it your testimony that blue
5 collar workers are targeted more than other
6 demographic groups by the tobacco companies?

7 A. No, it's not my testimony that they are
8 targeted more. With respect to the word major I
9 interpreted that to mean that -- and I may have
10 said at the time even, that the blue collar segment
11 of the population is a large segment in terms of
12 money with significant economic spending power, and
13 in that sense they would be considered major,
14 although not more important than other segments of
15 the market.

16 MR. GLASS: Thank you. Nothing further.

17 FURTHER EXAMINATION

18 BY MS. FLOWERS:

19 Q. Professor Semenik, you've testified
20 repeatedly that you've never looked at any of the
21 marketing reports of the cigarette industry; is
22 that right?

23 A. That's correct.

24 Q. So how do you know how they design their
25 campaigns and which are their major targets?

1 A. Well, that's the interesting thing about
2 this Surgeon General's report. It uses the word
3 major without citing anything, either. I do know
4 that there are more white collar consumers than
5 blue collar so there are far fewer blue collar
6 smokers than there are white collar smokers.

7 Q. And what do you base that on?

8 A. Those are data available from broad
9 industry reports like Advertising Age or Surgeon
10 General's reports.

11 Q. Other than the fact of how many blue
12 collar people there are versus white collar people,
13 do you have any basis for weighting the different
14 attempts to segment and target various portions of
15 the market of the cigarette industry?

16 MR. BURTON: Object to the form.

17 THE WITNESS: If we examine cigarette
18 advertising, as I said, I don't see cigarette ads
19 that portray blue collar people in blue collar
20 situations which would suggest to me that that's
21 not a major target market.

22 BY MS. FLOWERS:

23 Q. But you testified earlier that you didn't
24 conduct any systematic review of blue collar ads;
25 is that true?

1 A. Yes, and the reason is I didn't see any
2 blue collar ads. Now, if you have a batch of blue
3 collar ads you'd like to show me I could make a
4 judgment on that.

5 Q. As to the intended market as you said
6 before?

7 A. Right. But I'm also saying of all the ads
8 I reviewed I do not recall --

9 Q. Where I'm getting hung up is this sentence
10 to me speaks in terms of who the cigarette
11 companies are targeting.

12 A. Right.

13 Q. And you have typically in your testimony
14 before stayed away from that issue of intent saying
15 I haven't looked at industry research on that, so
16 I'm just struggling with how you can make a
17 quantitative decision -- make a quantitative
18 statement about who the major targets are or
19 aren't.

20 A. Because all the cigarette advertising I
21 reviewed in the last 11 years, 10 years, I have not
22 seen, except for one campaign, an advertising
23 campaign that portrayed anyone who even looked like
24 a blue collar person, so in the hundreds of ads
25 I've looked at --

1 Q. Does it follow that an ad always meets its
2 target? Doesn't that assume that it has to have a
3 blue collar person in it for it to appeal to a blue
4 collar person?

5 A. I think that's your point.

6 Q. Not really.

7 A. I'm disputing this citation about major
8 that's being cited here without any reference to
9 empirical data.

10 Q. With all due respect, this is one of the
11 reports that you're relying on.

12 A. And I said, in each of the reports I would
13 look at different parts of the report and determine
14 the extent to which I found it credible or useful.

15 Q. I suspect we're quibbling over a
16 definition, but just so I'm clear, you still have
17 not looked at any of the initial market research
18 that would be done for any given brand about who
19 they're going to target it toward?

20 A. I've seen reports like that in the course
21 of my preparation because they were provided by
22 plaintiff experts, and many of those reports are
23 unspecified, undesignated, hard to know what the
24 ultimate disposition was.

25 Q. Would any of those reports be support for

1 your conclusion that blue collar workers are not a
2 major target but just a target, just an ordinary
3 target?

4 MR. BURTON: Object to the form.

5 THE WITNESS: Yes, that's exactly what they
6 would say is that they are a target without saying
7 they're a major target.

8 BY MS. FLOWERS:

9 Q. Have you done any quantitative analysis of
10 how large a target they are for the cigarette
11 industry?

12 A. I have not done a quantitative analysis
13 nor have I seen a quantitative analysis.

14 MS. FLOWERS: I have nothing further.

15 MR. GLASS: Nothing further.

16 MR. BURTON: I have nothing.

17 (FURTHER DEPONENT SAITH NOT.)
18
19
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21
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23
24
25

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 ROBERT A. FALISE, et al.,)

4 Plaintiffs,)

5 vs.)

No. 99 CV 7392

6 AMERICAN TOBACCO COMPANY, et al.,)

7 Defendants.)

8 This is to certify that I have read the
9 transcript of my deposition taken in the
10 above-entitled cause by Kristin Cawley, Certified
11 Shorthand Reporter, on November 2, 2000, and that
12 the foregoing transcript accurately states the
13 questions asked and the answers given by me as they
14 now appear.

15 _____
16 RICHARD SEMENIK

17 SUBSCRIBED AND SWORN TO

18 before me this _____ day

19 of _____ 2000.

20 _____
21 Notary Public
22
23
24
25

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, Kristin Cawley, a notary public within and
5 for the County of Cook and State of Illinois, do
6 hereby certify that heretofore, to-wit, on the 2nd
7 day of November, 2000, personally appeared before
8 me, at 35 West Wacker Drive, Chicago, Illinois,
9 Richard Semenik, in a cause now pending and
10 undetermined in the United States District Court
11 for the Eastern District of New York, wherein
12 Robert A. Falise is the Plaintiff, and the American
13 Tobacco Company is the Defendant.

14 I further certify that the said witness was
15 first duly sworn to testify the truth, the whole
16 truth and nothing but the truth in the cause
17 aforesaid; that the testimony then given by said
18 witness was reported stenographically by me in the
19 presence of the said witness, and afterwards
20 reduced to typewriting by Computer-Aided
21 Transcription, and the foregoing is a true and
22 correct transcript of the testimony so given by
23 said witness as aforesaid.

24 I further certify that the signature to the
25 foregoing deposition was reserved by counsel for

1 the respective parties.

2 I further certify that the taking of this
3 deposition was pursuant to Notice, and that there
4 were present at the deposition the attorneys
5 hereinbefore mentioned.

6 I further certify that I am not counsel for nor
7 in any way related to the parties to this suit, nor
8 am I in any way interested in the outcome thereof.

9 IN TESTIMONY WHEREOF: I have hereunto set my
10 hand and affixed my notarial seal this 3rd day
11 of November, 2000.

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18 Kristin Cawley
19 NOTARY PUBLIC, COOK COUNTY, ILLINOIS
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